Supreme Court, U.S.
FILED

01 184 JUL 3 0 2001

OFFICE OF THE CLERK

No. ____

In the Supreme Court of the United States

Blue Diamond Coal Company,
Petitioner,

v.

Kenneth S. Apfel, Commissioner of Social Security Administration, and

Michael H. Holland, William P. Hobgood, Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carl E. Van Horn, Gail R. Wilensky, Trustees of the United Mine Workers of America Combined Benefit Fund,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOHN R. LEATHERS
COUNSEL OF RECORD
BUCHANAN, INGERSOLL, P.C.
301 GRANT ST., 20TH FL.
PITTSBURGH, PA 15219-1410
(412) 562-1880

DAN D. RHEA
ARNETT, DRAPER & HAGOOD
P.O. BOX 300
KNOXVILLE, TN 37901-0300
(865) 546-7000

Counsel for Petitioner

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

73 pp

QUESTION PRESENTED

Does Federal Rule of Civil Procedure 60(b)(6) grant discretion to a District Court to vacate its final declaratory judgment upholding the constitutionality of a federal statute, after the Supreme Court has declared the same statute unconstitutional in a case against the same defendants?

PARTIES TO THE PROCEEDINGS

Petitioner

Petitioner Blue Diamond Coal Company is a wholly owned subsidiary of James River Coal Company. There is no publicly held company that owns 10% or more of the stock of James River Coal Company.

Respondents

Kenneth S. Apfel in his capacity as the Commissioner of the Social Security Administration; and Michael H. Holland, William P. Hobgood, Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carl E. Van Horn, Gail R. Wilensky, in their capacities as the Trustees of the United Mine Workers of America Combined Benefit Fund.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

FEDERAL RULE OF CIVIL PROCEDURE PROVISION INVOLVED 1

STATEMENT OF THE CASE 2

REASON FOR GRANTING THE WRIT 5

The Court Of Appeals Has Decided An Important Question Of Federal Law That Has Not Been, But Should Be, Settled By This Court 5

I. This Court Should Decide Whether Fed.R.Civ.P. 60(b)(6) May Be Used By District Courts To Remediate The Inequity Of Allowing Divergent, Lower Court Legal Judgments On The Constitutionality Of A Federal Statute To Remain Effective After This Court Has Declared That Same Statute Unconstitutional In A Case Against The Same Defendants 5

II. The Court Of Appeals Has Erroneously Ruled That This Court's Invalidation Of A Federal Statute Under The Constitution Is Not An "Extraordinary Circumstance" That Warrants Equitable Examination Under Fed.R.Civ.P. 60(b)(6) By A District Court Of Its Own Inconsistent Judgment In Favor Of The Same Defendants 10

III. This Court Has Not Decided Whether One Of Its Decisions Declaring A Federal Statute Unconstitutional May Be An Extraordinary Circumstance That Warrants Rule 60(b)(6) Examination Of Inconsistent Lower Court Judgments In Favor Of The Same Defendants. 15

CONCLUSION 17

APPENDIX

Appendix A
Court of Appeals Opinion 1a

Appendix B
District Court Order Granting Motion to Vacate and Memorandum Opinion 19a

Appendix C
Original District Court Order of Dismissal and Opinion 30a

TABLE OF AUTHORITIES

Cases

Ackermann v. United States, 340 U.S. 193 (1950) 9

Adams v. Merrill Lynch Pierce Fenner & Smith,
888 F.2d 696 (10th Cir.1989) 7

Agostini v. Felton, 521 U.S. 203, 239 (1997) 15

Bank v. Cooper, 10 Tenn. 599 (1831) 8

Chicot County Drainage Dist. v. Baxter State Bank,
308 U.S. 371 (1940) 9

Collins v. City of Wichita,
254 F.2d 837 (10th Cir. 1958) 16

Conte v. General Housewares Corp.,
215 F.3d 628 (6th Cir. 2000) 11

Eastern Enterprises v. Apfel,
524 U.S. 498 (1998) . . . . . *passim*

Eastern Enterprises v. Chater,
110 F.3d 150 (1st Cir. 1997), cert. granted,
522 U.S. 931 (1997) 3

First American Bank v. Bonded Elevator, Inc.,
111 F.R.D. 74 (W.D. Ky. 1986) 7

Gondeck v. Pan American World Airways, Inc.
382 U.S. 25 (1965) 7, 8, 14

In Re Blue Diamond Coal Company,
174 B.R. 722 (E.D. Tenn. 1994),
affirmed 79 F.3d 516 (6th Cir. 1996),
cert. denied 519 U.S. 1055 (1997) 3

James B. Beam Distilling Co. v. Georgia,
501 U.S. 529 (1991) 8, 13

Lebron v. National R.R. Passenger Corp.
513 U.S. 374 (1995) 10

Liljeberg v. Health Services Acquisition Corp.,
486 U.S. 847 (1988) 7, 11

Marshall v. Board of Education,
575 F.2d 417 (3rd Cir. 1978) 16

Mary Helen Coal Corp. v. Hudson,
235 F.3d 207 (4th Cir. 2000) 6

McIntyre v. Balentine,
833 S.W.2d 52 (Tenn. 1992) 13

Norman v. Nichiro Gyogyo Kaisha, Ltd.,
761 P.2d 713 (Alas. 1988) 7

Pierce v. Cook & Co.,
518 F.2d 720 (10th Cir. 1975), cert. denied
423 U.S. 1079 (1976) 7

CONSTITUTIONAL PROVISIONS

U.S. Const., Article VI, Section 2 ("supreme Law of the Land" clause) 8

STATUTES

Coal Industry Retirees Health Benefits Act,
26 U.S.C. § § 9701, et. seq. . . . . *passim*

Pub.L.No. 106-291, Title VII 4

RULES

Fed. R. of Civ. P. 60(b)(6) . . . . . *passim*

TREATISES

J. Moore, 12 Moore's Federal Practice,
§ 60.48[5][b], p.60-181 (3d ed. 1997) 15

Blue Diamond Coal Company ("Blue Diamond") respectfully requests that this Court issue a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 249 F.3d 519 (6th Cir. 2001), and is reproduced in App. A at 1a-18a. The Memorandum Opinion and Order of the United States District Court for the Eastern District of Tennessee vacating its original Order of dismissal is unreported and is reproduced in App. B at 19a-29a. The original District Court Opinion is reported at 174 West B.R. 722 (E.D. Tenn. 1994) and is reproduced, with its accompanying Order of dismissal in App. C at 30a-48a.

JURISDICTION

The opinion of the United States Court of Appeals for the Sixth Circuit was issued on May 3, 2001. This Court has jurisdiction under 28 U.S.C. §1254(1).

FEDERAL RULE OF CIVIL PROCEDURE PROVISION INVOLVED

Federal Rule of Civil Procedure 60(b)(6) provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason justifying relief from the operation of the judgment.
> Fed.R.of Civ.P. 60(b)(6).

STATEMENT OF THE CASE

In 1992, Congress enacted the Coal Industry Retirees Health Benefit Act (the "Coal Act"), 26 U.S.C. §§ 9701 et. seq. The Coal Act required numerous coal companies to make monthly "premium" payments to the United Mine Workers of America (the "UMWA") Combined Benefit Fund (the "Combined Fund"), for the purpose of funding a medical and death benefit plan for UMWA retirees and their families. Only companies that had signed collective bargaining agreements with the UMWA in the past were compelled to pay these new, mandatory premium liabilities. The Coal Act's retrospective reach encompassed a group of 124 companies, such as the Petitioner, Blue Diamond Coal Company, whose past contracts with the UMWA had been completed and closed before calendar year 1974, at least 28 years before the Act was passed. Those companies' pre-1974 contracts with the UMWA intimated no promise or expectation of any future payments or liabilities to the UMWA's benefit plan. Those latter companies became known as the "superreachback" companies. See generally Eastern Enterprises v. Apfel, 524 U.S. 498 (1998).

Blue Diamond filed a lawsuit in the United States District Court for the Eastern District of Tennessee, seeking a declaratory judgment that the Coal Act, as applied to Blue Diamond, violated Blue Diamond's property rights under the Fifth Amendment of the federal Constitution. A small number of other superreachback companies also filed similar lawsuits in their own home-state federal courts, all around the same time, shortly after the Coal Act's passage. The defendants in each of these cases consisted of the Social Security Administration ("SSA") (initially sued through the Secretary of Health and Human Services), which had the statutory responsibility for assigning specific "premium"

liabilities to each company, and the Trustees of the Combined Fund, which collected, received, and spent each company's "premiums."

The district court dismissed Blue Diamond's case, finding the Coal Act did not violate its Fifth Amendment property rights. App. C at 31a, 47a. The Court of Appeals for the Sixth Circuit affirmed. This Court denied Blue Diamond's petition for a writ of certiorari. In Re: Blue Diamond Coal Company, 174 B.R. 722 (E.D. Tenn. 1994), affirmed 79 F.3d 516 (6th Cir. 1996), cert. denied 519 U.S. 1055 (1997). Several months later, this Court granted certiorari to another superreachback company that had filed one of the other similar lawsuits against the same defendants. See Eastern Enterprises v. Chater, 110 F.3d 150 (1st Cir. 1997), cert. granted, 522 U.S. 931 (1997). On June 25, 1998, this Court declared that the Coal Act violated the Fifth Amendment property rights of the Eastern Enterprises company. Eastern Enterprises v. Apfel, 524 U.S. 498 (1998).[1]

In the aftermath of Eastern Enterprises, the SSA addressed a letter to each of the supereachback companies, including Blue Diamond, declaring that all assignments of Coal Act liability to them were "void." The other defendant in Eastern Enterprises, the Combined Fund, ceased all collection efforts with respect to all of the superreachback companies, again including Blue Diamond. The Combined Fund then refunded the "premiums" it had previously received from the superreachback companies pursuant to

[1] The Court split on the specific textual basis within the Fifth Amendment for its ruling; four Justices felt the Takings clause had been violated by the retrospective effect of the Coal Act against the superreachback companies, while one Justice felt the Due Process clause had been violated.

"void" assignments. But here, the Combined Fund made a significant exception: it intentionally refused to refund premiums to Blue Diamond, because of the "final judgment" that had dismissed Blue Diamond's claims that the Coal Act was unconstitutional. Blue Diamond was accordingly denied a refund of approximately $13,000,000 in Coal Act premiums,[2] for no other reason that the fact it had tried unsuccessfully to have an unconstitutional statute declared unconstitutional, and had certiorari denied to it before June 25, 1998, the date Eastern Enterprises was decided.

To seek relief from what it perceived to be extremely unjust treatment, Blue Diamond filed a motion under Federal Rule of Civil Procedure 60(b)(6) to vacate the final judgment in its earlier lawsuit. The United States District Court for the Eastern District of Tennessee determined that "it would be unfair to allow its previous judgment to stand," in light of Eastern Enterprises, and granted Blue Diamond's motion. App. B at 28a. The Combined Fund appealed to the United States Court of Appeals for the Sixth Circuit. The court of appeals ruled that this Court's invalidation of the Coal Act, in part, in Eastern Enterprises, after that court and the district court had upheld the constitutionality of the same statute, was not an "extraordinary circumstance" justifying relief from the inconsistent lower court judgment under Fed.R.of Civ.P.60(b)(6). App. A at 8a, 12a-13a. Accordingly, the

[2] Blue Diamond's premium payments totaled $14,613,798.08. Some of that money, very roughly approximating ten percent, has been refunded to Blue Diamond, pursuant to a court settlement in a different case involving the calculation of individual premiums, and pursuant to a special Congressional appropriation, enacted after the District Court below had granted Rule 60(b)(6) relief, requiring a small, partial refund. The special appropriation, in Title VII of Pub.L. No. 106-291, made no attempt to preclude judicial remedies.

court of appeals ruled that the district court had abused its discretion under Rule 60(b)(6) in vacating its earlier judgment, reversed the district court's order and required the district court to reinstate its previous order of dismissal.

Blue Diamond seeks a writ of certiorari from the court of appeals' decision.

REASON FOR GRANTING THE WRIT:

The Court Of Appeals Has Decided An Important Question Of Federal Law That Has Not Been, But Should Be, Settled By This Court

I. This Court Should Decide Whether Fed.R.Civ.P. 60(b)(6) May Be Used By District Courts To Remediate The Inequity Of Allowing Divergent, Lower Court Legal Judgments On The Constitutionality Of A Federal Statute To Remain Effective After This Court Has Declared That Same Statute Unconstitutional In A Case Against The Same Defendants

The Court of Appeals characterized the simultaneous recognition and effectiveness of "divergent judgments" on the constitutionality of a single federal statute as a "common" and "necessary" result of the constitutional litigation process that ultimately leads to this Court. ("[C]hanges in the judicial interpretation of the law are common, and necessarily result in divergent judgments.") App. A at 12a-13a. The decision below thus holds that the constitutional rights of some must be lost in order to identify and preserve the constitutional rights of all, a notion that rings more of ritualistic sacrifice than application of law. The idea of sacrificing the constitutional rights of some for the benefit of all has grave implications for

the judiciary's primary role of applying the "equal protection of the law." This Court should decide the vitally important federal issue of whether sacrifices of constitutional rights by some are indeed "necessary" in constitutional litigation that leads to this Court, or whether Rule 60(b)(6) can be used by the district courts to avoid unjustified sacrifices, once this Court rules authoritatively on the meaning of the Constitution.

When "divergent judgments" addressing the constitutionality of a single statute remain effective, the "divergent" constitutional rules, and "divergent" statutory rules flowing from those judgments also remain effective at the same time. This means that one "law" exists for some people, while a completely different "law" exists for others. In this case, the Coal Act remains an effective, operative statute against Blue Diamond through the date of this Court's decision in Eastern Enterprises, while the unconstitutional effects of that statute have been retroactively avoided by most of the remaining companies in Blue Diamond's superreachback class. The Fifth Amendment has protected all of the property rights of most superreachback companies, but, so far at least, that fundamental constitutional provision has not protected all of the property rights of Blue Diamond. The Combined Fund retains approximately $13,000,000 that the Fifth Amendment says never belonged to it. See Mary Helen Coal Corp. v. Hudson, 235 F.3d 207 (4th Cir. 2000)(requiring the Combined Fund to pay interest on its refunds to superreachback companies, under Eastern Enterprises). The only thing that distinguishes Blue Diamond from most of its "superreachback" contemporaries, is the mere "accident of timing" that its case against the Coal Act was decided before June 25, 1998, when Eastern Enterprises was decided.[3]

[3] The "accident of timing" characterization for what has happened to Blue Diamond in this case comes from the

Respectfully, this arbitrary exclusion from the constitutional rule of law is likely to recur in the future, and when it does, it causes extraordinary injustice. Blue Diamond, as one of the first litigants in a series of cases challenging the constitutionality of a federal statute, has been denied "equal justice under the law" for no better reason than it raised entirely valid constitutional objections in the first place. Rule 60(b)(6) was written to enable district courts to relieve litigants of the effects of final judgments "whenever such action is appropriate to accomplish justice." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988). Respectfully, "equal justice" **is** "justice."

Contrary to the court of appeals' acceptance of "divergent judgments" as a necessity, "equal justice under the law" represents an important consideration in evaluating the "justice," or the "extraordinary" injustice of the continued recognition of an erroneous lower court judgment that upholds an unconstitutional statute. This Court, and others have invoked "equal justice" to vacate an otherwise "final" adjudication in order to apply more mundane legal rules, such as tort and contract principles, on an equal, retroactive, basis to participants in the "same accident" or "same contract." See Gondeck v. Pan American World Airways, Inc., 382 U.S. 25 (1965); Pierce v. Cook & Co., 518 F.2d 720 (10th Cir. 1975); Adams v. Merrill Lynch Pierce Fenner & Smith, 888 F.2d 696 (10th Cir. 1989); Norman v. Nichiro Gyogyo Kaisha, Ltd. 761 P.2d 713 (Alas. 1988); First American Bank v. Bonded Elevator, Inc. 111 F.R.D. 74 (W.D. Ky. 1986).

Combined Fund itself. One of its attorneys, in corresponding with the Department of Interior on a funding issue created by Eastern Enterprises, described this Court's grant of certiorari review to the Eastern Enterprises company, instead of to one of the earlier certiorari petitioners from the superreachback class, such as Blue Diamond, an "accident of timing."

Blue Diamond submits that "equal justice" is more, not less, important in the application of the Constitution. [4]

As the limitations of Gondeck and its progeny to participants in the "same accident" or "same contract" suggest, there are only two possible circumstances that serve to justify the continued recognition of erroneous lower court judgments, upholding a statute declared unconstitutional by this Court.[5] Either a defendant may have reasonably, and actually, relied upon its initial lower court victory, before this Court addressed the issue, or the plaintiff could have done

---

[4] The constitutional concept of "equal justice under the law" has historical origins predating the 14th Amendment, going back to the Magna Carta in 1215, in which the King of England surrendered his sovereign authority to deprive his barons of their lives, liberty or property, except by the "Law of the Land." See, e.g. Bank v. Cooper, 10 Tenn. 599 (1831), in which the Tennessee Supreme Court invalidated a retrospective "special" Tennessee statute that imposed procedural trial disabilities on some, but not all similarly situated litigants, whose cases had already accrued, as inconsistent with the "Law of the Land" clause of the Tennessee Constitution. The federal Constitution has always contained the same lofty "Law of the Land" phrase, and directs every judge to follow it. U.S.Const., Article VI, paragraph 2.

[5] A two member plurality of this Court remarked, in James B. Beam Distilling Co. v Georgia, 501 U.S. 529 (1991), that "temporal distinctions" justified limiting the retroactivity of this Court's constitutional decisions by the procedural barrier of a final judgment. Neither the plurality, nor the rest of the Court, however, has ever offered any opinions of what should happen when relevant "temporal distinctions" are completely absent, and the only difference between the winners and the losers in a constitutional case is the timing of their decisions by their respective courts. James B. Beam did not address Rule 60(b)(6) issues.

something, or failed to do something, that resulted in the waiver of his constitutional rights as declared by this Court. See Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940); see also Ackermann v. United States, 340 U.S. 193 (1950). The district court below, as the primary fact finder under Rule 60(b)(6), found neither of those circumstances in this case. App. B at 21a-29a. And indeed, they do not exist here.

As is likely whenever a constitutionally questionable federal statute is enacted, the Coal Act was challenged, practically immediately, by a series of declaratory judgment lawsuits brought by several superreachback companies against the same defendants in each case. Thus, when the SSA and the Combined Fund obtained a lower court judgment dismissing Blue Diamond's lawsuit, those defendants achieved no closure of the legal issues therein upon which they could reasonably or practically rely. Those constitutional issues remained alive, and unresolved in other cases against the same defendants, until this Court finally provided real closure to those same defendants in Eastern Enterprises.

Moreover, Blue Diamond had exhausted its appellate remedies, without waiving any of its constitutional rights [6]

[6] In the courts below, the Combined Fund attempted to make a case that Blue Diamond had waived its due process objection to the Coal Act by limiting its petition for a writ of certiorari to this Court to its Takings Clause objection. However, Blue Diamond's objections, under the Takings Clause and the Due Process Clause, both made pursuant to the same facts, had been fully litigated, and dismissed, in the courts below. Under those circumstances, the omission of a strictly legal issue from a petition for certiorari does not waive it; inasmuch as the respondents are free to raise that issue in their response, as the SSA did, and this Court is free to consider and adjudicate that

Blue Diamond objected to the constitutionality of the Coal Act in the district court, in the court of appeals, and finally in this Court, in an unsuccessful effort to obtain review here.

Ultimately, if, as the court of appeals has stated, the continuing effectiveness of "divergent judgments" on the constitutionality of a single federal statute is a commonplace "necessity", then the constitutional rights of future initial challengers like Blue Diamond Coal Company stand to become the sacrificial offerings gathered by the federal judicial system as it debates and finally resolves important issues of constitutional law. Most respectfully, Blue Diamond submits that this Court should consider whether requiring such sacrifices will chill the orderly refinement of constitutional law at the bar of this Court, by discouraging potential litigants from being the ones who "go first." And more importantly, Blue Diamond submits that this Court should consider the vitally important question of whether requiring such sacrifices, by categorically denying Rule 60(b)(6) relief to them, either serves, or defeats, the threshold judicial goal of applying "equal justice under the law."

II. The Court Of Appeals Has Erroneously Ruled That This Court's Invalidation Of A Federal Statute Under The Constitution Is Not An "Extraordinary Circumstance" That Warrants Equitable Examination Under Fed.R.Civ.P. 60(b)(6) By A District Court Of Its Own Inconsistent Judgment In Favor Of The Same Defendants

---

issue, particularly when it is a condition precedent to the stated issue, as Justice Kennedy suggested the "due process" issue related to the takings issue, in his concurrence in Eastern Enterprises. See Lebron v. National R.R. Passenger Corp., 513 U.S. 374 (1995). Neither court below accepted or relied upon this particular argument of the Combined Fund.

Relief from judgments under Fed.R.Civ.P. 60(b)(6) may be granted only in "extraordinary circumstances." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988). The court of appeals below never reached or addressed the District Court's ultimate conclusion that continued recognition of its own erroneous judgment, after Eastern Enterprises, would be "unfair." Instead, the court of appeals ruled that "a change in decisional law is usually not, by itself, an 'extraordinary circumstance' meriting Rule 60(b)(6) relief" (App. A at 8a) and "changes in the judicial interpretation of the law are common, and necessarily result in divergent judgments." App. A at 12a-13a. From those conclusions, the court of appeals ruled the district court had abused its discretion in granting, on simple fairness grounds, Rule 60(b)(6) relief from its erroneous judgment and ordered the district court to reinstate that erroneous judgment. App. A at 18a.

To be sure, the court of appeals did conduct its own *de novo* "fairness" analysis, in violation of its limited scope of review of Rule 60(b) matters.[7] App. A at 16a-17a. In its own analysis, the court of appeals found fairness in the continued recognition of "divergent judgments" here, because of what it characterized as the Combined Fund's "substantial" "reliance" on the district court's earlier, final judgment. The court of appeals found that the Combined Fund had relied on the district court's earlier judgment by merely spending the premiums it had received pursuant to the Coal Act. App. A at 17a. There was no evidence in the record to show that the Combined Fund spent premiums in actual reliance on the district court's earlier judgment. Indeed other facts discerned

[7] District court rulings on Rule 60(b) matters are supposed to be reviewed solely for an "abuse of discretion." Conte v. General Housewares Corp., 215 F.3d 628 (6th Cir. 2000).

by the court of appeals indicate that the opposite is true. The earlier district court judgment against Blue Diamond imposed no affirmative obligations itself to pay money to the Combined Fund, nor did that judgment specifically authorize the Combined Fund to spend any money it received. To the contrary, that judgment simply dismissed Blue Diamond's lawsuit for a declaratory judgment. App. C at 31a. All the record reveals is that the Combined Fund merely followed its statutory mandate under the Coal Act when it spent all of the superreachback company money it received, not only from Blue Diamond, but from the other superreachback companies as well, regardless of their litigation or "judgment" status.[8] When Eastern Enterprises was decided, the Combined Fund refunded most of that which it had spent, because the money had all been received under "void," unconstitutional assignments of liability. The Combined Fund specifically "relied" on its victory against Blue Diamond only when it denied Blue Diamond a refund that was distributed to nearly every other superreachback company that paid its "premiums". That reliance occurred after, not before, that

[8] Further, in this case, as the district court below tried to say, see App. B at 28a, the Coal Act itself precluded the Combined Fund from claiming any equitable reliance on its mere receipt and expenditure of premium payments. The Coal Act required the Combined Fund to refund premiums in certain situations, regardless of whether it had already spent them. 26 U.S.C. §9706(f)(3)(A)(i). While both the district court and the court of appeals correctly noted the technical inapplicability of that statutory refund requirement to this case, the court of appeals ignored its significant implications for fairness, for which the district court cited it. The Coal Act itself did not allow the Combined Fund to invoke equitable "reliance" on its receipt and expenditure of premiums, if the premiums were assessed and received by mistake.

same defendant had finally lost on the same issue in Eastern Enterprises.[9]

The court of appeals did not address, or even discern, any of the differences between "a change in decisional law" and this Court's invalidation of a statute under the Constitution. "A change in decisional law" usually operates only on a prospective basis, so that the "law" in place before the change remains "the law" for that earlier time, even after the change is announced. See, e.g., McIntyre v. Balentine, 833 S.W.2d 52, 58 (Tenn. 1992) (prospectively changing the common law of Tennessee from that of contributory negligence, to that of comparative negligence). This Court's invalidation of a statute under the Constitution, however, works differently. When this Court declares a statute unconstitutional, the statute is essentially stripped of all legal effect, both before and after this Court's decision, excepting only those effects that may be protected by procedural barriers such as statutes of limitation or final judgments. James B. Beam Distilling Co. v Georgia, 501 U.S. 529 (1991). And the procedural barrier of a final judgment should be subject to equitable reconsideration when it operates in a

[9] Of the 124 superreachback companies, 13 were denied refunds on account of "final judgments"; every other company received refunds of any premiums it had paid. Of those 13, nine involved consent judgments pursuant to settlements, and one involved a failure to petition this Court for certiorari. Only three of those companies, including Blue Diamond, refused to waive their constitutional rights under the Fifth Amendment by surrendering their cases; instead they pursued their rights all the way to this Court. This Court accepted the fourth petition from a superreachback company, that of the Eastern Enterprises company. That company, like all but 13 of the superreachback companies, received full, retroactive relief against the unconstitutional effect of the Coal Act.

particularly unequal fashion. See Gondeck v. Pan American World Airways, Inc., 382 U.S. 25 (1965). The Court of Appeals rejected the application of Gondeck solely because that case did not involve the invalidation of a statute under the Constitution.

When this Court invalidates a statute on constitutional grounds, the judicial "interpretation" of that statute does not "change" and often "the judicial interpretation" of the Constitution itself does not even "change." This Court's decision in Eastern Enterprises announced no "change" in the judicial "interpretation" of the Constitution, or of the Coal Act. Rather, it retroactively invalidated the Coal Act as far as the superreachback companies were concerned, and as far as these same defendants were concerned. As a result of Eastern Enterprises, the Coal Act's governmental administrator, the SSA, declared all of its superreachback assessments "void." As a result of Eastern Enterprises, the private administrator of the Coal Act, the Combined Fund, forgave past due premium assessments that would have been owed by several superreachback companies, and refunded all of the premiums that had been paid by most of the rest of them. [10] After this Court had ruled against the Combined Fund, the Combined Fund nevertheless excluded Blue Diamond from a constitutionally compelled remedy, an action which has left the Coal Act's unconstitutional effects in place against Blue Diamond to this day. Blue Diamond respectfully submits that these additional circumstances that follow from the final decision of this Court declaring a federal statute

[10] Similarly to approximately half of the superreachback companies, Blue Diamond paid its statutory premiums on a regular, timely, and monthly basis, despite its objections to the constitutionality of those assessments. Approximately half of the superreachback companies never paid any premiums at all, and now, never will.

unconstitutional, after one or more lower courts have declared otherwise, are entirely capable of characterization as "extraordinary" under Fed.R.Civ.P. 60(b)(6). Such decisions by this Court do not occur, as the court of appeals assumed, on a "common" or everyday basis.

III. This Court Has Not Decided Whether One Of Its Decisions Declaring A Federal Statute Unconstitutional May Be An Extraordinary Circumstance That Warrants Rule 60(b)(6) Examination Of Inconsistent Lower Court Judgments In Favor Of The Same Defendants

This Court has never ruled, or even implied, whether one of its own decisions, invalidating a recently enacted federal statute on constitutional grounds, after the lower courts had declared otherwise in favor of the same defendants, is an "extraordinary circumstance" that may warrant relief from those lower court judgments under Fed.R.Civ.P.60 (b)(6). The Court has observed, in dicta, that "intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." Agostini v. Felton 521 U.S. 203, 239 (1997). However, the Court has never characterized its own retroactive invalidation of a federal statute, or a part thereof, in such terms, or in contrary terms, either. The same treatise cited by this Court in support of its Agostini dicta advises that Rule 60(b)(6) usage would make "perfect sense" to remedy divergent judgments on the constitutionality of a single statute, after this Court authoritatively rules on the constitutionality of the "same statute." See J. Moore, 12 Moore's Federal Practice, § 60.48[5][b], pp.60-181—60-182.1 (3d ed. 1997).

This issue has never been presented to this Court for review, probably because District Court decisions applying Rule 60(b)(6) are reviewed (and should be reviewed) in the Courts of Appeal solely for an abuse of discretion, which ordinarily is an exceedingly difficult hurdle for the unsuccessful party to overcome. For example, the court below, in declaring that this kind of case is not "extraordinary", relied primarily upon similar statements made, in dicta, in Collins v. City of Wichita, 254 F.2d 837 (10th Cir. 1958), in which the district court denied Rule 60(b)(6) relief and the court of appeals merely held the district court did not abuse its discretion. Of particular significance in Collins, in which the movant was attempting to reopen a closed case challenging the constitutionality of a municipal eminent domain proceeding, was the fact that the movant's constitutional rights in that case, to personal notice of the eminent domain proceeding under the Due Process Clause, and to "just compensation" from that proceeding, under the Takings Clause, had been restored to him by the defendant municipality, after this Court ruled that the original newspaper notice, authorized by state statute, was deficient. See Collins, 254 F.2d at 839, n.2. Thus the equities of Rule 60(b)(6) in Collins could not be said, in a limited appellate review, to clearly disfavor the trial court's denial of relief to the movant, who had already had his constitutional rights restored to him. No review was sought in this Court. See also Marshall v. Board of Education, 575 F.2d 417 (3d Cir.1978) (District Court properly denied Rule 60(b)(6) relief to litigant who had failed to exhaust its appellate remedies against an earlier, erroneous constitutional judgment). Accordingly, this issue has never been presented here. Because the continued effectiveness of an incorrect judgment upholding the constitutionality of a federal statute, a problem which was not present in Collins, supra, concerns nothing less

than the continued denial of constitutional rights, this Court should consider this important federal issue.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

By:
JOHN R. LEATHERS
Counsel of Record
BUCHANAN, INGERSOLL, P.C.
301 GRANT STREET, 20TH FLOOR
PITTSBURGH, PA 15219-1410
(412) 562-1880

DAN D. RHEA
ARNETT, DRAPER & HAGOOD
P.O. BOX 300
KNOXVILLE, TN 37901-0300
(865) 546-7000

Counsel for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[September 21, 2000, Argued]
[May 3, 2001, Decided]
[May 3, 2001, Filed]

Nos. 99-6110/99-6111

BLUE DIAMOND COAL CO.,
Plaintiff-Appellee,

v.

TRUSTEES OF THE UMWA COMBINED BENEFIT FUND,
Defendant-Appellant
(99-6110)

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant-Appellant
(99-6111).

Before: BOGGS and SUHRHEINRICH, Circuit Judges; ALDRICH, District Judge.*

OPINION

ALDRICH, District Judge. Defendant-Appellants, the Secretary of Health and Human Services and the Trustees of the United Mine Workers of America Combined Benefit Fund appeal a district court's order vacating a prior judgment under Fed. R. Civ. P. 60(b)(6). For the following reasons, we REVERSE the order of the district court and REMAND the case with instructions for the re-entry of final judgment in favor of the defendant-appellants.

I.

This appeal arises out of litigation concerning the constitutionality of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. § § 9701-9722. The factual circumstances surrounding the adoption of the Coal Act and its applicability to the plaintiff-appellee, Blue Diamond Coal Company ("Blue Diamond"), have been explained in detail by the Supreme Court in *Eastern Enterprises v. Apfel*, 524 U.S. 498, 504-14, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998), and by this Circuit in *In re Blue Diamond Coal Co.*, 79 F.3d 516, 518-20 (6th Cir. 1996).

Since the 1930s, the coal industry has been negotiating with the United Mine Workers of America (the "UMWA") concerning employee health benefits. Through a series of

---

* The Honorable Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation.

collective bargaining agreements; beginning with the Krug-Lewis Agreement of 1946, several funds were established to provide health benefits for coal miner retirees and their families. Benefits were funded on a "pay as you go" basis by assessing a royalty on coal production. Due to numerous circumstances - including an increase in benefits, opt-out provisions in the collective bargaining agreements, the rapid escalation of health care, the retirement of a generation of miners and a decline in coal production - these various health benefit funds faced financial ruin in the late 1980s.

Consistent with a long history of federal mediation between the UMWA and the coal industry, Congress passed the Coal Act to ensure the continuation of medical health benefits to coal miner retirees and their families. This Act consolidated the several health benefit funds into the UMWA Combined Benefit Fund (the "Combined Fund"). Instead of the "pay as you go" funding structure, the Coal Act assigned an individual miner and his eligible dependants to a particular coal company based on criteria such as the length of employment with that company and whether that company participated in previous collective bargaining agreements. Existing coal companies were also required to pay an additional premium to cover retirees who were "orphaned" when the employers responsible for their health benefits went out of business.

To prevent the consolidation of liability upon a relatively small number of coal producers, the Coal Act also contained what has become known as a "super reachback" provision, 28 U.S.C. § 9706(a)(3). *See Lindsey Coal Mining Co. v. Shalala*, 901 F. Supp. 959, 968 n.2 (W.D. Penn. 1995); *In re Blue Diamond Coal Co.*, 174 B.R. 722, 724

(E.D. Tenn. 1994). Under this provision, companies were assigned the health benefit liabilities of a coal miner retiree based upon his length of employment with that company under pre-1978 collective bargaining agreements. *See* 28 U.S.C. § 9706(a)(3). Consequently, super reachback companies became responsible for health benefits under the Combined Fund despite having opted out of UMWA collective bargaining agreements and previous health benefit funds for many years.

Blue Diamond, a coal mining company located in Knoxville, Tennessee, and a reorganized debtor under Chapter 11 of the Bankruptcy Code, was one of the companies affected by the super reachback provision of the Coal Act. Though Blue Diamond has been in the coal mining business for over fifty years, it has not been party to a UMWA collective bargaining agreement, nor has it employed union labor, since 1964. Nonetheless, under § 9706(a)(3), Blue Diamond was responsible for the health benefits of approximately 1400 living beneficiaries despite having opted out of the collective bargaining agreements assigning health benefit liability almost three decades ago.

Given this retroactive allocation of liability, the constitutionality of the super reachback provision of the Coal Act was highly contested. Blue Diamond was one of the first corporations to test the Act, arguing that such retroactive liability was an unconstitutional taking and a violation of due process. In *In re Blue Diamond Coal Co.*, 174 B.R. 722 (E.D. Tenn. 1994), the district court upheld the constitutionality of the Coal Act, entering a final judgment against Blue Diamond and in favor of the government and the Combined Fund. Blue Diamond appealed and this Circuit,

consistent with the rulings of other circuit courts to address the issue, upheld the constitutionality of the Act and affirmed the judgment of the district court. *See In re Blue Diamond Coal Co.*, 79 F.3d 516; *see also Davon Inc. v. Shalala*, 75 F.3d 1114 (7th Cir. 1996); *Eastern Enterprises v. Chater*, 110 F.3d 150 (1st Cir. 1997). Blue Diamond then appealed to the Supreme Court, which denied certiorari on January 6, 1997. *See Blue Diamond Coal Co. v. Chater*, 519 U.S. 1055, 136 L. Ed. 2d 608, 117 S. Ct. 682 (1997).

However, on June 25, 1998, the Supreme Court decided *Eastern Enterprises v. Apfel*, 524 U.S. 498, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998). In that case, *Eastern Enterprises*, a company assigned liability under § 9706(a)(3), challenged that provision of the Coal Act as a violation of the Takings Clause and due process. The Supreme Court held that § 9706(a)(3) was unconstitutional as applied, but was deeply divided in its reasoning. Writing for a four-justice plurality, Justice O'Connor found that the super reachback provision of the Coal Act amounted to an unconstitutional taking under the Fifth Amendment. *See id.* at 522-38. Justice Kennedy, concurring in part and dissenting in part, refused to extend a Takings Clause analysis to economic legislation that did not impinge a specific property right, and instead found that § 9706(a)(3) was a rare example of congressional legislation running afoul of due process. *See id.* at 547-50. Justice Breyer, writing for a four-justice dissent, agreed with Justice Kennedy that the Takings Clause does not extend to economic legislation such as the Coal Act, but found that § 9706(a)(3) did not violate due process. *See id.* at 526.

Consistent with the ruling in *Eastern Enterprises*, the government ended all payment proceedings for the coal

companies affected by the super reachback provision of the Coal Act, including Blue Diamond. This included waiving the debt of companies that had failed to pay premiums to the Combined Fund before the ruling in *Eastern Enterprises*, as well as refunding the premiums of those companies that had made payments into the Combined Fund pursuant to the super reachback provision. However, the government and the Combined Fund refused to refund those companies that had paid premiums pursuant to a *pre-Eastern Enterprises* final judgment or settlement - thirteen companies in all, including Blue Diamond.

By mid-1998, Blue Diamond had paid $14,613,798.08 into the Combined Fund pursuant to the district court's 1994 order. As a result of the decision in *Eastern Enterprises*, Blue Diamond brought a motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure seeking post judgment relief on August 28, 1998. The district court granted the motion, vacated the prior judgment, and restored the case to the active docket. The Combined Fund subsequently sought and was eventually granted certification for interlocutory appeal under 28 U.S.C. § 1292(b). On appeal, both the government and the Combined Fund argue that the district court improperly granted Rule 60(b)(6) relief.

II.

Rule 60(b) allows a district court to vacate a final judgment for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not

> have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

A district court's grant of post-judgment relief under Rule 60(b) is reviewed for an abuse of discretion. *See Browder v. Director, Dep't of Corrections,* 434 U.S. 257, 263 n.7, 54 L. Ed. 2d 521, 98 S. Ct. 556 (1978); *Windsor v. United States Dep't of Justice,* 740 F.2d 6, 7 (6th Cir. 1984). A finding of an abuse of discretion requires "a definite and firm conviction that the trial court committed a clear error of judgment." *Davis v. Jellico Community Hosp., Inc.,* 912 F.2d 129, 133 (6th Cir. 1990) (citations omitted). However, relief under Rule 60(b) is "circumscribed by public policy favoring finality of judgments and termination of litigation." *Waifersong Ltd., Inc. v. Classic Music Vending,* 976 F.2d 290, 292 (6th Cir. 1992). This is especially true in an application of subsection (6) of Rule 60(b), which applies "only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule." *Olle v. Henry & Wright Corp.,* 910 F.2d 357, 365 (6th Cir. 1990); *see also Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 863-64, 100 L. Ed. 2d 855, 108 S. Ct. 2194 (1988). This is because "almost every conceivable

ground for relief is covered" under the other subsections of Rule 60(b). *Olle,* 910 F.2d at 365; *see also Hopper v. Euclid Manor Nursing Home, Inc.,* 867 F.2d 291, 294 (6th Cir. 1989). Consequently, courts must apply Rule 60(b)(6) relief only in "unusual and extreme situations where principles of equity mandate relief." *Olle,* 910 F.2d at 365.

III.

It is well established that a change in decisional law is usually not, by itself, an "extraordinary circumstance" meriting Rule 60(b)(6) relief. *See Agostini v. Felton,* 521 U.S. 203, 239, 138 L. Ed. 2d 391, 117 S. Ct. 1997 (1997) ("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6) . . . ."); *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.,* 131 F.3d 625, 628-29 (7th Cir. 1997); *Travelers Indemnity Co. v. Sarkisian,* 794 F.2d 754, 757 (2d Cir. 1986); *Berryhill v. United States,* 199 F.2d 217, 219 (6th Cir. 1952). This principle holds even if a law is invalidated on state or federal constitutional grounds. *See Batts v. Tow-Motor Forklift Co.,* 66 F.3d 743, 748-49 (5th Cir. 1995) ("Changes in decisional law based on constitutional principles are not of themselves extraordinary circumstances sufficient to justify Rule 60(b)(6) relief."); *Collins v. City of Wichita,* 254 F.2d 837, 838-39 (2d Cir. 1958) (holding that invalidation by the United States Supreme Court of Kansas statute that was basis of previous final judgment insufficient to establish "extraordinary circumstances" to merit Rule 60(b)(6) relief). Instead, courts have relied on an applicable change in decisional law, coupled with some other special circumstance, in order to grant Rule 60(b)(6) relief. *See Ritter v. Smith,* 811 F.2d 1398, 1401 (11th Cir. 1987) ("Our

investigation thus leads us to conclude that something more than a 'mere' change in the law is necessary to provide the grounds for Rule 60(b)(6) relief."); *Matarese v. LeFevre*, 801 F.2d 98, 106 (2d Cir. 1986) ("We think it particularly appropriate for the district court to entertain a Rule 60(b)(6) motion . . . in the context of a habeas proceeding in which conventional notions of finality of litigation have no place.") (internal quotes and citations omitted); *Overbee v. Van Waters & Rogers*, 765 F.2d 578, 580 (6th Cir. 1985) (holding that since the judgment was not final, and the Ohio Supreme Court reversing itself within one year was unusual, the district court abused its discretion in not granting Rule 60(b)(6) relief).

The district court bases much of its decision on a line of cases establishing that post-judgment relief can be granted when a change in decisional law generates divergent judgments for litigants involved in the same transaction or injury. *See Blue Diamond Coal Co. v. Secretary of Health and Human Services*, No. 3:93-CV-473, slip op. at 19 (E.D. Tenn. Nov. 4, 1998); *see also Gondeck v. Pan Am. World Airways*, 382 U.S. 25, 27, 15 L. Ed. 2d 21, 86 S. Ct. 153 (1965) (granting post-judgment relief where divergent results for the survivors of two people killed in the same car accident resulted from a circuit split in statutory interpretation); *Pierce v. Cook & Co.*, 518 F.2d 720, 723 (10th Cir. 1975) (granting Rule 60(b)(6) relief where divergent results for two plaintiffs injured in the same car accident resulted from choice of federal rather than state forum, since federal court based its decision on state law subsequently overturned by Oklahoma Supreme Court in related case); *First Am. Nat'l Bank v. Bonded Elevator, Inc.*, 111 F.R.D. 74, 75 (W.D. Ky. 1986) (granting Rule 60(b)(6) relief where divergent outcomes for two plaintiffs seeking recovery under the same promissory

note resulted from choice of federal rather than state forum, since federal court based its decision on state law subsequently invalidated by Kentucky Supreme Court in related case); *Norman v. Nichiro Gyogyo Kaisha, Ltd.*, 761 P.2d 713, 717 (Alas. 1988) (granting post-judgment relief under Alaska rule identical to Rule 60(b)(6) where divergent outcome for two plaintiffs seeking recovery under the same shareholders agreement resulted from subsequently invalidated interpretation of Alaska law in related case).

Blue Diamond argues that this "same transaction" line of cases is applicable in this case. Blue Diamond states "[the] substantially identical . . . historical contractual activity with the UMWA . . . which brought [the coal industry] into the [the super reachback provision's] retroactive grasp" suggests that the numerous coal companies affected by the 1992 Coal Act were multiple parties to a common transaction. Blue Diamond's Final Br. at 15. Blue Diamond further argues that even though the alleged common transaction in this case, the Coal Act, is not a "tortious accident" or "common contract," such authority applies since this Court must not privilege "tort law principles" over the "equal application of constitutional rights." *Id.* at 18-19, *citing* Parnell v. Rapides Parish Sch. Bd., 563 F.2d 180, 185 (5th Cir. 1977) ("[The Constitution is] not geared to patchwork geography. It tolerates no independent enclaves."). Consequently, Blue Diamond argues, the "same transaction" reasoning is applicable here since "multiple parties injured contemporaneously in a common transaction will receive fundamentally different measures of legal protection . . . solely because . . . their claims went to final adverse judgments before the law applicable to the entire transaction was authoritatively clarified." *Id.*

Blue Diamond's arguments, though novel, are not persuasive. While courts might have discretion under Rule 60(b)(6) to resolve divergent judgments in the "same transaction," such reasoning is inapplicable here. As an initial matter, two of the cases cited by Blue Diamond and the district court base much of their justification for post-judgment relief on the outcome-determinative test of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 82 L. Ed. 1188, 58 S. Ct. 817 (1938). *See Pierce*, 518 F.2d at 723 ("In diversity jurisdiction cases the results in federal court should be substantially the same as those in state court litigation arising out of the same transaction or occurrence."); *First Am. Nat'l Bank*, 111 F.R.D. at 75 (same). Since this case does not deal with divergent results stemming from a choice of a federal rather than a state forum, these cases are clearly distinguishable.

More important, the cases cited by Blue Diamond and the district court involve transactions with a much tighter nexus of common activity, common rights, and common liability than a law passed by Congress to regulate the payment of medical health benefits to the retirees of an entire industry. To be sure, the shared history of the various companies affected by the super reachback provision of the 1992 Coal Act define a fixed and identifiable universe of affected parties. *See* Blue Diamond's Final Br. at 15. However, the nature and extent of the liability formerly imposed by the super reachback provision varies with each particular company's involvement with the several health benefit funds which preceded the Combined Fund. *See Eastern Enterprises*, 524 U.S. at 504-16 (detailing the events leading to the passage of the 1992 Coal Act); *In re Blue Diamond Coal Co.*, 79 F.3d at 519-20 (describing assignment

of liability under § 9706 of the Coal Act). Moreover, each company's particular involvement with these previous funds was established over the course of several decades in a series of discrete and separate collective bargaining negotiations with the UMWA. *See Eastern Enterprises,* 524 U.S. at 504-16. In short, Blue Diamond's arguments - that the common history of negotiation between the coal industry and the UMWA leading to the passage of the Coal Act constitutes a "common transaction" - contain no limiting principle analogous to a singular event, such as a car accident, or a singular contract, such as a shareholders agreement. *See Gondeck*, 382 U.S. at 27 (car accident); *Norman,* 761 P.2d at 717 (shareholders agreement).

The district court itself recognized the difficulties of applying the "same transaction" line of cases to the current situation. *See Blue Diamond Coal Co.,* No. 3:93-CV-473, slip op. at 19 (stating "the Court recognizes that this is not a 'same accident' case . . . ."). However, the district court stated "One could argue that all super-reachback companies were part of the same transaction and that their cases have resulted in conflicting judgments." *Id.* This Court cannot accept such an extension of relevant authority. If the circumstances of this case establishes the "same transaction," it is difficult to imagine any company, whose industry is subject to extensive federal regulation, that would not be entitled to Rule 60(b)(6) relief upon a change in the judicial interpretation of the applicable law. For example, the airline industry, the automobile manufacturing industry, and the telecommunications industry are all linked by their respective common histories - histories that include extensive federal regulation and federal involvement. Moreover, changes in the judicial interpretation of the law are common, and necessarily

result in divergent judgments. Allowing all these companies to seek Rule 60(b)(6) relief based on the notion that their "common history" led to the passage of a particular law or regulation, which is subsequently invalidated due to a change in judicial interpretation, necessarily resulting in divergent judgments, would render our legal system's strong presumption in favor of the "finality of judgments and termination of litigation" meaningless. *Waifersong Ltd., Inc.*, 976 F.2d at 292.

Nor is this Court persuaded that refusal to extend the "same transaction" line of cases to this situation is tantamount to privileging "tort law principles" over the "equal application of constitutional rights." Blue Diamond's Final Br. at 18-19. This Court recognizes that, generally speaking, our system of law does not privilege certain rights, constitutional or not, over others. *See Butz v. Economou,* 438 U.S. 478, 523, 57 L. Ed. 2d 895, 98 S. Ct. 2894 (1978) (Rehnquist, J., concurring in part and dissenting in part) ("That the Framers thought some rights sufficiently susceptible of legislative derogation that they should be enshrined in the Constitution does not necessarily indicate that the Framers likewise intended to establish an immutable hierarchy of rights in terms of their importance to individuals."). Such criticism, however, is inapplicable in this case. Our refusal to extend the "same transaction" reasoning is simply a recognition that liability formerly assigned under the super reachback provision of the Coal Act is not a common transaction similar to a car accident or a shareholders agreement. *See Gondeck,* 382 U.S. at 27; *Norman,* 761 P.2d at 717.

In addition to relying on the "same transaction" line of cases, the district court also cites three factors which militate in favor of granting Rule 60(b)(6) relief:

> (1) the amount of money involved (over Fourteen Million from a reorganized Chapter 11 debtor); (2) the unfairness of the fact that Blue Diamond may be the only super-reachback coal company to have paid anything into the Combined Fund; and finally (3) the fact that the Coal Act itself directs the Combined Fund to "repay" premiums paid pursuant to assignments made in error.

Blue Diamond Coal Co., No. 3:93-CV-473, slip op. at 21. However, two of these three factors are inapplicable in this case. The second factor, that Blue Diamond is alone in its payment to the Combined Fund, is a clear error. Documents furnished to this Court on appeal establish that thirteen companies, including Blue Diamond, have not received a refund of premiums from the Combined Fund due to a *pre-Eastern Enterprises* final judgment or settlement. *See* Corrected J.A., vol. 2 (sealed) at 403. The third factor, that the Coal Act directs the Combined Fund to "repay" premiums made in error, is also inapplicable. Under 26 U.S.C. § 9706(f), companies may challenge an assignment of the health benefit liability of a particular coal miner retiree by requesting the Commissioner of Social Security to furnish "detailed information as to the work history of the beneficiary and the basis of the assignment." 26 U.S.C. § 9706(f)(1). Clearly, this section of the Coal Act deals with a review of the particular facts concerning a particular retiree, and does not

contemplate the general applicability or constitutionality of the super reachback provision.

Consequently, only the first factor, the amount of money paid by Blue Diamond to the Combined Fund pursuant to the final judgment, is relevant. This Court notes that the amount Blue Diamond has paid to the Combined Fund is significantly larger than any of the other twelve companies which did not receive a refund of premiums due to a final judgment or settlement. Blue Diamond has paid over $ 14.5 million to the Combined Fund in accordance with the final judgment in *In re Blue Diamond Coal Co.*, 174 B.R. 722, whereas the next closest amount paid by any other company is approximately $ 2.4 million. *See* Corrected J.A., vol. 2 (sealed) at 403.

However, the amount of money Blue Diamond has paid to the Combined Fund in this case, though substantial, is not by itself sufficient reason for a district court to grant Rule 60(b)(6) relief. This Court, consistent with other courts, has previously held that "payment of money damages pursuant to the consent judgment simply does not rise to the level of an excessive burden or hardship warranting [] extraordinary relief provided by Rule 60(b)(6)." *Waste Conversion, Inc. v. Kelley,* 19 F.3d 1435, 1994 WL 119431, at *4 (6th Cir. 1994); *see also In re Fine Paper Antitrust Litigation,* 840 F.2d 188, 194 (3d Cir. 1988) (holding "final money judgment" not an extraordinary circumstance meriting Rule 60(b)(6) relief where party failed to appeal, but some other party's appeal on same legal grounds was granted). Indeed, one other district court contemplating Rule 60(b)(6) relief for a super reachback company affected by a pre-*Eastern Enterprises* decision has noted the difficulties of basing such

relief on the amount of money paid. *See Templeton Coal Co., v. Apfel,* No. TH 93-158-C-T/H, slip op. at 18-19 (S.D. Ind. Nov. 17, 1999) (noting that if Rule 60(b)(6) relief were based solely on amount of money paid, courts would have to establish an appropriate threshold amount for such relief, and whether such relief should be compared against a party's net worth).

Moreover, other interests not contemplated by the district court favor adhering to the final judgment of this case. Courts have noted that Rule 60(b)(6) relief is especially appropriate in cases where the interest in finality is somehow abrogated. *See Adams v. Merrill Lynch,* 888 F.2d 696, 698, 702 (10th Cir. 1989) (holding Rule 60(b)(6) relief appropriate where decisional law concerning dismissed arbitration claims changed while other claims were still pending before the district court); *Ritter,* 811 F.2d at 1401-02 (holding Rule 60(b)(6) relief appropriate where "erroneous final judgment of this court had not been executed"); *Matarese,* 801 F.2d at 106 (holding habeas proceedings have no "conventional notions of finality"); *Overbee,* 765 F.2d at 580 (holding Rule 60(b)(6) relief appropriate where judgment not final). Courts have also granted Rule 60(b)(6) relief when a dispositive change in decisional law occurs while a timely appeal is still pending. *See Batts,* 66 F.3d at 748 n.6 (noting changes in decisional law may justify post-judgment relief where an appeal of the case is pending) *citing Wilson v. Al McCord, Inc.,* 858 F.2d 1469, 1478-79 (10th Cir. 1988); *United States ex rel. Thomas v. Gramley,* 986 F. Supp. 502, 505 (N.D. Ill. 1997) (noting Rule 60(b)(6) relief granted where dispositive change in decisional law occurred while case was pending timely appeal; interest in enhancing efficiency and promoting the smooth flow of litigation justify relief where appeal court

is highly likely to reverse decision). This interest in finality is related to another equitable interest - that parties rely on final judgments once the disputes have been fully and vigorously adjudicated. *See Chicot County Drainage Dist. v. Baxter State Bank,* 308 U.S. 371, 375, 84 L. Ed. 329, 60 S. Ct. 317 (1940) (noting that "Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly" are important considerations weighed against "an all inclusive statement of a principle of absolute retroactive invalidity"); *Ritter,* 811 F.2d at 1401-02 (noting there is a "greater interest in finality" once a judgment is executed given that parties rely on those outcomes).

In this case, the interest in finality is undisputed. The district court's decision in *In re Blue Diamond Coal Co.,* 174 B.R. 722, disposed of all of Blue Diamond's claims in a fully executed final judgment. Blue Diamond's appeal was also disposed of by this Court, and the Supreme Court, before the change in decisional law was announced in *Eastern Enterprises. See In re Blue Diamond Coal Co.,* 79 F.3d 516, *cert. denied,* 519 U.S. 1055, 136 L. Ed. 2d 608, 117 S. Ct. 682. Moreover, the reliance interest of the Combined Fund on the previous final judgment is substantial. Four years had elapsed between the district court's declaratory judgment and its subsequent grant of post-judgment relief. During that time, payments made to the Combined Fund pursuant to the previous decision were used to cover the medical health benefits of numerous retirees. Given the public policy in favor of the finality of judgment, and the length of time between final judgment and Rule 60(b)(6) relief, equity clearly favors adhering to the district court's final judgment.

As a final note, this Court recognizes that the decision to grant Rule 60(b)(6) relief is a case-by-case inquiry that requires the trial court to intensively balance numerous factors, including the competing policies of the finality of judgments and the "incessant command of the court's conscience that justice be done in light of all the facts." *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984) (citations omitted). Our decision today is merely a determination that, in this case, the district court abused its discretion in granting such relief.

IV.

Accordingly, the district court's decision to grant post-judgment relief is REVERSED. The case is REMANDED to the district court for the re-entry of final judgment in favor of the defendant-appellants.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

[Filed November 4, 1998]

NO. 3:93-CV-473

IN RE: BLUE DIAMOND COAL COMPANY,	)
Debtor,	)
BLUE DIAMOND COAL COMPANY	)
v.	)
DONNA E. SHALALA, Secretary of Health and Human Services, and ... TRUSTEES OF THE UNITED MINE WORKERS' OF AMERICA COMBINED BENEFIT FUND	)

ORDER

Pursuant to a memorandum opinion this day passed to the Clerk for filing, Blue Diamond's motion to vacate this Court's judgment of November 9, 1994, [Doc. 62], is hereby **GRANTED** and this action is **RESTORED** to the Court's active docket for further proceedings.

ENTER:

/s/_____
Thomas G. Hull
United States District Judge

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

[Filed November 4, 1998]

NO. 3:93-CV-473

IN RE: BLUE DIAMOND COAL COMPANY,	)
Debtor,	)
BLUE DIAMOND COAL COMPANY	)
v.	)
DONNA E. SHALALA, Secretary of Health and Human Services, and ... TRUSTEES OF THE UNITED MINE WORKERS' OF AMERICA COMBINED BENEFIT FUND	)

MEMORANDUM OPINION

This was an adversary proceeding in which Blue Diamond Coal Company,[1] a reorganized Chapter 11 Debtor, challenged the constitutionality of the "super-reachback" provision of the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act), 26 U.S.C. § § 9701 et seq. In an Order of November 9, 1994, this Court found that the challenged provision violated neither the Due Process nor the Takings Clauses of the Fifth Amendment and, therefore, was not unconstitutional. The United States Court of Appeals for the Sixth Circuit affirmed in an opinion filed on March 21, 1996, *In re Blue Diamond Coal Co.,* 79 F.3d 516 (6th Cir. 1996), and the United States Supreme Court denied certiorari. *Blue Diamond Coal Company v. Chater,* 519 U.S. 1055, 117 S. Ct. 682, 136 L. Ed. 2d 608 (1997). A year later, the Supreme Court decided *Eastern Enterprises v. Apfel,* 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed. 2d 451 (1998), and, in a plurality opinion authored by Justice O'Connor, found the "super-reachback" provision of the Coal Act unconstitutional as applied to the plaintiff in that case. Four justices found it effected an unconstitutional "taking." One found that the application of the Coal Act to Eastern would violate due process principles because of the unprecedented scope of its retroactivity.[2]

---

[1] Blue Diamond is now BDCC Holding Company.

[2] Justice Kennedy, who concurred in the judgment but not in the reasoning, was of the opinion that the Takings Clause did not apply because the challenged provision did not operate on or alter an identified property interest (such as a parcel of real estate, a valuable interest in an intangible such as an intellectual property, or

The facts in *Eastern Enterprises* are not materially different from those in Blue Diamond's case. There is no question that, if certiorari had been granted in Blue Diamond's case, our decision would have been overruled.

Not surprisingly, Blue Diamond is back before this Court on a motion to vacate our judgment of November 9, 1994, pursuant to Rule 60(b)(6), Federal Rules of Civil Procedure. [Doc. 62]. It would have this action restored to the Court's active docket for further proceedings.

Rule 60(b) permits a court to grant relief from a judgment or order for any of the following grounds: (1) mistake, (2) newly discovered evidence, (3) fraud, (4) a void judgment, (5) a satisfied, released or discharged judgment, or when a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective effect, and, finally, (6) for "any other reason justifying relief from the operation of the judgment."

None of the first five grounds for relief appear to apply to this case and Blue Diamond's best hope is to come

---

even a specific bank account or accrued interest). He pointed out that the Takings Clause operates not as a bar but as a conditional limitation on the government, permitting it to do what it wants so long as it pays the charge. In other words, it presupposes that what the government intends to do is otherwise constitutional. See: *Eastern Enterprises,* 118 S. Ct. at 2154-2157. The four dissenting justices (who would have upheld the constitutionality of the super-reachback provision) also were of the opinion that this was not a Takings Clause case.

under the "any other reason" catch-all of Rule 60(b)(6).

Rule 60(b)(6) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States,* 335 U.S. 601, 615, 93 L. Ed. 266, 69 S. Ct. 384 (1949). (In Klapprott, a naturalized citizen was allowed to have a four-year-old default judgment of denaturalization set aside upon a showing that he had been sick, indigent and imprisoned at the time the judgment was entered.) However, the United States Court of Appeals for the Sixth Circuit has held that Rule 60(b)(6) should apply "only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule" and "only as a means to achieve substantial justice when 'something more' than one of the grounds contained in the Rule 60(b)'s first five clauses is present." *Olle v. Henry & Wright Corporation,* 910 F.2d 357, 365 (6th Cir. 1990); *Hopper v. Euclid Manor Nursing Home, Inc.,* 867 F.2d 291, 294 (6th Cir. 1989). The "something more" must include unusual and extreme situations where principles of equity mandate relief. *Olle*, at 365.

The question before the Court is whether or not this case presents one of those "unusual and extreme situations where principles of equity mandate relief." Blue Diamond insists that it does.

In support of its motion, Blue Diamond advises the Court that from October of 1993, through June of 1998 (when *Eastern Enterprises* was decided), and pursuant to this Court's judgment, it paid Fourteen Million, Six Hundred Thirteen Thousand, Seven Hundred Ninety-Eight Dollars and Eight

Cents ($ 14,613,798.08) in premiums to the United Mine Workers of America Combined Benefit Fund pursuant to 26 U.S.C. § 9706(a)(3), as required by the Coal Act. However, in July of 1998, the Associate Commissioner for Program Benefits of Social Security declared (in a related lawsuit still pending in this Court, No. 2:97-CV-263) that the assignments of Combined Fund beneficiaries to Blue Diamond under the Coal Act were "void" under the provision of the Supreme Court's decision in the *Eastern Enterprises* case and that Blue Diamond had no further obligation to the Combined Fund. Presumably, therefore, Blue Diamond seeks retrospective, not prospective, relief from the judgment it would vacate.

In further support of its motion, Blue Diamond also advises the Court that, while it was complying with the law controlling it at that time, and making its payments to the Combined Fund, other similarly situated, "super-reachback" coal companies made no payments whatsoever and now will never be required to do so. Under these circumstances, any operation of this Court's previous judgment against Blue Diamond is unfair, inequitable and unjust both as a matter of Fifth Amendment law and pursuant to ordinary common law principles of equity, fairness and justice.

Kenneth S. Apfel, Commissioner of Social Security, and the Trustees of the Combined Fund make the argument that there is nothing either exceptional or extraordinary in a final decision such as ours turning out to be inconsistent with some later controlling appellate decision, particularly when, as here, the question presented was a close and difficult one. They cite *Berryhill v. United States,* 199 F.2d 217, 219 (6th Cir. 1952), for the proposition that a change in the judicial view of the applicable law, after a final judgment, is not a

basis for vacating a judgment entered before announcement of the change. The Trustees also cite *Collins v. City of Wichita, Kansas,* 254 F.2d 837, 839 (10th Cir. 1958), and *Usery v. Board of Regents for Oklahoma Agricultural and Mechanical College,* 1976 U.S. Dist. LEXIS 11927, 22 Fed. R. Serv. 2d (Callaghan) 1474 (E.D. Okla. 1976), for the proposition that a subsequent decision declaring unconstitutional the statute upon which a prior judgment was based is not grounds for Rule 60(b)(6) relief.

While the Court is fully aware of the chaos that would ensue if otherwise final judgments were reopened every time there was a change in the judicial view of applicable law, it is somewhat unfair to characterize the decision in *Eastern Enterprises* as merely a change in the judicial view of the applicable law. When this Court addressed Blue Diamond's challenge to the constitutionality of the super-reachback provision of the Coal Act, there was no controlling judicial interpretation of the challenged provision and the Court was writing on a clean slate. One could argue that the applicable law was first announced, albeit rather unclearly, in the *Eastern Enterprises* decision.

In another argument, the Trustees of the Combined Fund concede that the Supreme Court found the "super-reachback" provision unconstitutional, but point out that only four of the justices thought the act was unconstitutional as an uncompensated "taking"; five of the Eastern justices expressed the opinion that the "takings" or "just compensation" clauses of the Fifth Amendment to the Constitution do not apply to economic regulatory measures such as the Coal Act. For this reason, they argue that Blue Diamond's insistence that it is the victim of an uncompensated

"taking" (and is therefore entitled to just compensation) is not valid. While only four justices found the super-reachback provision an unconstitutional "taking," it appears that, in our circuit at least, that finding would be deemed to be the basis for the ruling. *See*: *DLS, Inc. v. City of Chattanooga,* 107 F.3d 403, 408, fn.4 (6th Cir. 1997); *Triplett Grille, Inc. v. City of Akron,* 40 F.3d 129 (6th Cir. 1994). The main purpose of the Takings Clause of the Fifth Amendment is to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. *Penn Central Transportation Co. V. City of New York,* 438 U.S. 104, 123-124, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978). If, in fact, Blue Diamond is the only super-reachback company to bear this public burden, the Court must conclude that Blue Diamond was "taken" for over Fourteen Million Dollars.

The Court is aware that district courts have been reversed on abuse of discretion grounds for granting Rule 60(b)(6) relief, see: *DeWeerth v. Baldinger,* 38 F.3d 1266 (2nd Cir. 1994). Nevertheless, the fact that we have such a rule on the books means that district courts must have some discretion to grant relief from their judgments. For example, courts have granted post-judgment relief in "same accident" cases to harmonize the legal outcome for victims of the same motor vehicle accident, *Gondeck v. Pan American World Airways, Inc.,* 382 U.S. 25, 86 S. Ct. 153, *15 L. Ed. 2d 21 (1965); Pierce v. Cook & Company,* 518 F.2d 720 (10th Cir. 1976, en banc), and also to harmonize the results for parties of a common contractual transaction. *First American National Bank of Nashville v. Bonded Elevator, Inc.,* 111 F.R.D. 74 (W.D. Ky 1986).

While the Court recognizes that this is not a "same accident" case, in *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743, 748 fn. 6 (5th Cir. 1995), the Fifth Circuit suggested that Rule 60(b)(6) relief may be warranted where the subsequent court decision is closely related to the case in question or where two cases arising out of the same transaction result in conflicting judgments. One could argue that all the super-reachback companies were part of the same transaction and that their cases have resulted in conflicting judgments.

In the *Gondeck* case, the United States Supreme Court, quoting a prior decision, *United States v. Ohio Power Company,* 353 U.S. 98, 77 S. Ct. 652, 1 L. Ed. 2d 683 (1957), said that "the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules." 382 U.S. at 26-27.

The Court is convinced that it would be unfair to allow its previous judgment to stand. Among the factors which militate in favor of extraordinary relief are: 1) the amount of money involved (over Fourteen Million from a reorganized Chapter 11 debtor); 2) the unfairness of the fact that Blue Diamond may be the only super-reachback coal company to have paid anything into the Combined Fund; and finally 3) the fact that the Coal Act itself directs the Combined Fund to "repay" premiums paid pursuant to assignments made in error. 26 U.S.C. § 9706(f)(3)(A). With regard to this last factor, the Court recognizes that the assignments may not have been made in error but have now been voided. Whether or not the Trustees of the Combined Fund must now repay Blue Diamond, or whether the Secretary of Health and Human Services must make a "just compensation" will be

decided on another day after the parties have had time to brief this issue.

Nevertheless, Blue Diamond's motion will be granted; this Court's judgment of November 9, 1994, will be vacated and this action will be restored to the Court's active docket for further proceedings.

An appropriate Order will follow.

ENTER:

/s/_____
THOMAS G. HULL
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

[Filed November 9, 1994]

NO. CIV-3-93-473

IN RE: BLUE DIAMOND COAL COMPANY,
Debtor,

BLUE DIAMOND COAL COMPANY

v.

DONNA E. SHALALA, Secretary of Health and Human Services, and ...

TRUSTEES OF THE UNITED MINE WORKERS' OF AMERICA COMBINED BENEFIT FUND

ORDER

Pursuant to an Opinion this day passed to the Clerk for filing, Blue Diamond's motion for summary judgment is DENIED; the motions filed by the Secretary of Health and Human Services and by the Trustees of the Combined Benefit Fund are hereby GRANTED; and this action is DISMISSED.

ENTER:

/s/_____
Thomas G. Hull
United States District Judge

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

[Filed November 9, 1994]

NO. CIV-3-93-473

IN RE: BLUE DIAMOND COAL COMPANY,
Debtor,

BLUE DIAMOND COAL COMPANY

v.

DONNA E. SHALALA, Secretary of Health and Human Services, and ...

TRUSTEES OF THE UNITED MINE WORKERS' OF AMERICA COMBINED BENEFIT FUND

OPINION

This is an adversary proceeding in which Blue Diamond Coal Company, a reorganized Chapter 11 Debtor, challenges the constitutionality of the "super-reachback" provision of the Coal Industry Retiree Health Benefit Act of

1992 (the Coal Act), 26 U.S.C. § § 9704(a)(3). All parties have moved for summary judgment; the issues have been fully briefed; and the case was heard on oral argument on Monday November 7, 1994. The Court makes the findings of fact and conclusions of law which follow.

I. BACKGROUND

Blue Diamond runs bituminous coal mining and mining-related operations in Kentucky and Tennessee through several wholly-owned subsidiary companies. Between 1947 and 1964, Blue Diamond employed members of the United Mine Workers of America (UMWA) [1] and, pursuant to various National Bituminous Coal Wage Agreements (NBCWAs), made contractually defined royalty payments to a multiemployer welfare and retirement fund that operated on a pay-as-you-go basis. This fund promised its beneficiaries no permanent or perpetual benefits. In fact, beneficiaries of this plan were specifically told that benefits were revocable and not vested. The continuation of benefits at any future time was entirely contingent upon the receipt of sufficient tonnage royalty revenues from the participating operators. Blue Diamond's last UMWA contract expired in April of 1964.

---

[1] The United Mine Workers of America is a labor organization representing coal industry mine workers throughout North America. For more than forty years, it has entered into a series of successive collective bargaining agreements known as National Bituminous Coal Wage Agreements with the Bituminous Coal Operators' Association, Inc., a multiemployer bargaining association established in 1951 that represents various large and small bituminous coal operators in collective bargaining with the UMWA.

Since that time, it has made no contributions to any UMWA benefit trust or done anything which would give any of its current or former employees a reasonable expectation of lifetime health benefits from any UMWA trust funds.

In response to the passage of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § § 1001-1381, mandating that pension funds be fully funded on an actuarial basis, the National Bituminous Coal Wage Agreement of 1974 restructured the existing UMWA benefit trust, dividing it into four separate trusts, only two of which are relevant to this lawsuit. One was the UMWA 1950 Benefit Plan and Trust which provided health benefits to miners who retired before January 1, 1976, and their dependents, including retirees from Blue Diamond. The other was the UMWA 1974 Benefit Plan and Trust which provided health benefits to both active miners and miners who retired after January 1, 1976, and their dependents.

By the late 1970s, a combination of demographic and economic factors began to adversely impact the financial stability of these UMWA benefit trusts. In the 1980s, many coal companies went out of business or otherwise ceased contributing to the funds, effectively dumping their retirees into the beneficiary population and forcing the remaining, participating employers to shoulder increasingly large contribution obligations to pay not only for their own retirees but also for these newly "orphaned" retirees. The increasing financial instability of the trusts, coupled with the economic disruption heralded by the strike of the Pittson Coal Company, lead Congress to seek a legislative solution to the problem. In March of 1990, then-Secretary of Labor Elizabeth Dole established the bi-partisan Advisory

Commission on Mine Workers Retiree Health Benefits which eventually produced the Coal Commission Report. The Coal Commission found, among other things, that the retired miners were entitled to the health care benefits that had been promised to them and that such commitments must be honored. It recommended either an industry-wide funding plan broadly taxing all current coal operators, or a more limited arrangement funded by past and present NBCWA signatories only -- possibly reaching back to the "signatory class of 1978." The report did not suggest that pre-ERISA signatories of NBCWAs like Blue Diamond had ever promised lifetime health care benefits or that they should be included in the "reach back" provision.

The Coal Act, which eventually passed, is undeniably good legislation designed to ensure the continuation of health benefits for tens of thousands of retired coal miners and their dependents.[2] It seeks to rescue from insolvency the two UMWA Welfare Benefit Trust Funds which were established in 1974, after the passage of ERISA. It does so by combining the two funds into a newly created "Combined Fund" and requiring all past employer signatories to NBCWAs to finance the Combined Fund's benefits. In other words, the legislation goes beyond the reachback suggested by the Coal Commission, which would have involved only post-ERISA signatories of collective bargaining agreements, to encompass coal companies such as Blue Diamond that have not signed NBCWAs since well before ERISA required vested benefits.

---

[2] The Coal Act does not provide health benefits to coal industry retirees who were never members of the United Mine Workers of America

The Coal Act requires the Secretary of Health and Human Services to identify retired coal mine employees and their dependents who were entitled to health care benefits under the 1950 UMWA Benefit Fund and the 1974 Benefit Fund and to assign those beneficiaries to coal operators, such as Blue Diamond, on the basis of the operators' former contractual obligations to the former welfare retirement funds. The Coal Act imposes its obligations in proportion to a signatory operator's past experience in the industry and, under its assignment hierarchy, implicitly recognizes that coal operators signing post-ERISA collective bargaining agreements should bear the responsibility, in the first instance, for UMWA retiree health benefits. Only when the Secretary cannot assign a beneficiary to a more recent signatory does the Act look to pre-ERISA coal operators, such as Blue Diamond, to make beneficiary assignments. In addition, under the Coal Act, the Secretary may also assess Blue Diamond, and other operators, additional premiums, over and above the premiums assessed for beneficiaries specifically assigned to them, for their proportional share of "orphans," a class of beneficiaries with respect to whom the Secretary is unable to make assignments to specific coal operators. Of the 1,133 miners currently assigned to Blue Diamond by the Secretary, only 74 had actually retired from Blue Diamond when its last UMWA contract expired in 1964. (These retirees have been receiving health benefits from the UMWA 1950 Benefit Fund for the last twenty-eight years). The bulk of the retirees currently assigned to Blue Diamond worked for it at some point in their careers but actually retired from other employers.

II. THIS CASE

In this lawsuit, Blue Diamond alleges that the Secretary's imposition of assessments will cost it $ 4.9 Million Dollars in its first year alone; that its potential liability is approximately $ 25 Million Dollars; and that the Act deprives it of property without due process of law, and without just compensation, in violation of the Due Process and "Takings" clauses of the Fifth Amendment to the United States Constitution. It also charges that the Coal Act retroactively deprives it of legitimate contractual expectations, effectively rewriting long-expired UMWA wage agreements and requiring it to pay more compensation to its former employees than originally bargained for. It likens the Coal Act, as applied, to a retroactive minimum wage law that would require employers to give former employees a raise.

The Coal Act is predicated on a congressional finding that,

> in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees. Pub. L. 102-486, Section 19142. (emphasis added)

Blue Diamond's entire argument is that, if a coal operator never signed an NBCWA after 1974, it cannot possibly be one of the "persons most responsible" for the liabilities of the

two post-ERISA trust funds the plan seeks to salvage. It points out that the Coal Commission recommended the legislation because it found that the miners had been promised lifetime benefits and that this commitment should be honored. Only those employer signatories to post-ERISA NBCWAs can be said to have ever actually promised lifetime health benefits to their retirees and their dependents. Blue Diamond contends that, unless it can be shown to have caused the liability of the UMWA health care programs by contractually promising retirement health care benefits, the Constitution prohibits Congress from retroactively holding it responsible for funding those benefits now in any manner other than a general tax upon society as a whole. In other words, it would have this Court find that it is unconstitutional to assign beneficiaries and assessments of premium liabilities to pre-ERISA signatories of contracts with the UMWA who never promised lifetime health benefits to their UMWA retirees.

A. The Due Process Challenge

The Due Process Clause of the United States Constitution provides that "no person shall ... be deprived of life, liberty, or property, without due process of law." In considering Due Process challenges to economic legislation, the Supreme Court has held repeatedly that such legislation must be sustained unless Congress has acted arbitrarily or irrationally. "Legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15, 49 L. Ed. 2d 752, 96 S. Ct. 2882 (1976). This deferential standard

applies even if the legislation readjusting benefits and burdens upsets otherwise settled expectations or imposes a new duty or liability based on past acts. *See: Turner Elkhorn,* 428 U.S. at 16. As long as "a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Pension Benefits Guar. Corp. v. R. A. Gray & Co.,* 467 U.S. 717, 729, 81 L. Ed. 2d 601, 104 S. Ct. 2709 (1984).

What these cases tell us is that, in order to mount a successful Due Process challenge to the Coal Act's super-reachback provision, Blue Diamond must show that there is no rational relationship between that part of the legislation and an appropriate government goal. In other words, it must show that there is nothing in its past conduct that would make it rational to consider it "responsible" for the "plan liabilities." This it cannot do. The best Blue Diamond can do is show that, in extending the reachback provision beyond that recommended by the Coal Commission, Congress apparently erroneously believed that Blue Diamond and other contributors to pre-ERISA welfare and retirement funds had actually or effectively promised lifetime benefits to retirees and their beneficiaries. However, the actual Congressional finding which is mentioned in the legislation is not that Blue Diamond and others like it had actually promised benefits but that they bore "responsibility" for the "plan liabilities." There is no doubt that, to some extent, they did. By ceasing to contribute to the UMWA trust fund after its contractual requirement to do so had expired, Blue Diamond created some of the "orphans" who became the responsibility of the remaining contributing operators. These orphaned miners

continued to draw upon the funds and contributed to their financial instability.

The *Turner Elkhorn* case is highly instructive here. That case involved a Due Process challenge to the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972. In that legislation, Congress required coal operators to pay the medical costs of their former employees who were suffering from black lung disease, even though these employees had terminated their work in the industry before the Act was passed and even though the operators had never contracted to pay such compensation. The Supreme Court found that the Black Lung Benefits Act rationally spread the costs of the employees' disabilities to those who had profited from their labor. The same reasoning can be applied to the facts of this case. Congress has chosen to spread the costs of the Combined Fund's benefits to those employers who had profited from the labor of UMWA miners and who, at some time in their histories, had contributed to multiemployer welfare benefit funds.

B. The Takings Clause Challenge

The Takings Clause of the Fifth Amendment prohibits the government from taking property for public use without paying the former owner just compensation. It is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Penn Central Transp. Co. v. New York City,* 438 U.S. 104, 123, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978). However, there are "a wide variety of contexts ... [in which] government may execute laws or

programs that adversely affect recognized economic values." *Id.* at 124. "Vested economic rights are held subject to the Government's substantial power to regulate for the public good the conditions under which business is carried out and to redistribute the benefits and burdens of economic life." *United States v. Locke,* 471 U.S. 84, 105, 85 L. Ed. 2d 64, 105 S. Ct. 1785 (1985). There is no set formula for determining whether economic legislation violates the Takings Clause. Courts normally consider the economic impact of the regulation on the challenging party; the extent to which the regulation has interfered with its distinct investment-backed expectations; and the character of the governmental action. See *Connolly v. Pension Ben. Guaranty Corp.,* 475 U.S. 211, 225, 89 L. Ed. 2d 166, 106 S. Ct. 1018 (1986).

The *Connolly* case involved an unsuccessful Takings Clause challenge to the "withdrawal liability" amendments to ERISA in the Multiemployer Pension Plan Amendments Act of 1980 (MMPAA). After carefully considering the regulatory takings factors, the Supreme Court found that the MMPAA did not constitute a taking, even though the employees who benefited from the Act's requirements might have had no employment relationship whatsoever with the employer affected by the law. The Court found that, the MMPAA's "interference with the property rights of an employer arises from a public program that adjusts the benefits and burdens of economic life to promote the common good and ... does not constitute a taking requiring Government compensation." 475 U.S. at 225. The Court made similar findings in another Takings Clause challenge, *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust, __ U.S.____,* 124 L. Ed. 2d 539, 113 S. Ct. 2264 (1993). The reasoning in the *Connolly* and *Concrete Pipe* cases can of

course, be applied to the facts of the instant case. However, it is important to note that in both *Connolly* and *Concrete Pipe*, the plaintiffs had voluntarily participated in ERISA-regulated, "defined benefit" pension plans at a time when contingent employer withdrawal liability for unfunded vested benefits was already imposed by the ERISA law as it existed when the plaintiffs signed up. The challenged amendments in the MMPAA simply made employer withdrawal liability automatic and unlimited, immediately upon an employer's withdrawal from a multi-employer defined benefit plan. The "taking" in those cases was upheld because of the employers' previous association with their ERISA plans.

In order to survive a Takings Clause challenge under the terms of both *Connolly* and *Concrete Pipe*, the Coal Act must rest on some conduct on Blue Diamond's part that would make it rational to hold it responsible for the health benefits to be covered by the Combined Fund. Blue Diamond's conduct, that subjects it to liability under the Coal Act, consisted of employing UMWA members between 1947 and 1964, and making contractually defined and limited royalty contributions to a multiemployer welfare and retirement fund that operated on a pay-as-you-go basis. It is not at all clear that this is a constitutionally sufficient basis for liability. In the Court's opinion, Blue Diamond's Takings Clause challenge has considerable appeal.

Of the three factors found by the *Connolly* court to be of particular significance to a Takings Clause challenge, the first is, of course, the economic impact of the regulation upon the claimant. It is undisputed that the Coal Act "takes" $ 4.9 Million Dollars of Blue Diamond's money in the first year alone and it may end up taking as much as $ 25 Million

before Blue Diamond's assigned beneficiaries expire. This is a gross, uncompensated taking whose severe economic impact must be recognized. Any analysis of the first factor must strongly support Blue Diamond's position.

The second *Connolly* factor is the extent to which the regulation has interfered with distinct investment-backed expectations. The Secretary suggests that it was unreasonable for Blue Diamond to believe that its 1964 National Bituminous Coal Wage Agreement would forever limit its responsibility to the UMWA benefit trusts. Maintaining economic stability in the coal industry has long been a matter of federal concern. Blue Diamond should not be surprised that Congress acted in 1992 to avert the crisis in the 1950 and 1974 Benefit Trusts which threatened to disrupt coal production and deprive UMWA retired miners of their long-expected lifetime health benefits. The Court agrees that it was reasonably foreseeable that Congress would take action to ensure that the UMWA benefit trust would remain solvent and capable of meeting its obligations. But it was a good deal less foreseeable that the legislation chosen to solve the problem would reach back to conduct which occurred almost 30 ago in order to enforce a "promise" Blue Diamond never actually made. The best that can be said for the Secretary's argument is that Blue Diamond had to have known that its own retirees were among the many "orphans" drawing benefits from the UMWA trusts and contributing to their financial instability. The second factor also favors Blue Diamond, but less emphatically.

The third factor to be considered is the "character" of the Coal Act. The Secretary suggests that the nature of the governmental action in the Coal Act is indistinguishable from

the MPPAA withdrawal liability provisions which the Supreme Court found not to constitute a taking in *Connolly*. She points out that neither MPPAA nor the Coal Act permits the government to physically invade or permanently appropriate any of the employer's assets for its own use. Rather, both statutes implement a "public program that adjusts the benefits and burdens of economic life to promote the common good" and therefore do not constitute a taking requiring government compensation. The defendant Trustees, in their brief, also point out that, to the maximum extent possible, the Coal Act imposes liability that is directly related to the employment relationship between each assigned operator and the Combined Fund's beneficiaries. With regard to the assignment of "orphans," they suggest that Congress carefully weighed the alternatives and expressly determined that the costs of providing health care for orphan retirees would be most fairly borne by those NBCWA coal operators who voluntarily chose to participate in a multiemployer health care system and presumptively derived a quid pro quo in collective bargaining from their agreement to do so.

With regard to the Secretary's assignment of retirees who actually worked for it in the past, Blue Diamond concedes that it has received the "fruits of their labor" (echoing the legal basis upon which a Takings Clause challenge failed in the Turner Elkorn case). However, it points out that the Combined Fund created by the Coal Act also provides benefits to wives, widows and dependents of miners who never worked in the coal mines. It has not enjoyed the fruits of their labor. Blue Diamond contends, generally, that the true "character" of the Coal Act, as applied to it, is that of a statute justifying a gross property deprivation solely by means of a fiction -- a presumed

promise of benefits which was never actually made.

The Court fully understands Blue Diamond's argument that it made no promise of lifetime benefits and, therefore, did not contribute to the UMWA benefit funds' legal liability. But it did contribute to the problem which the Coal Act attempts to solve because its own retirees are beneficiaries of the Combined Fund. The Court is mindful that the Takings Clause is designed to bar the government from forcing some people to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. And it is by no means clear that, in all fairness and justice, the public rather than past and present NBCWA signatories, should shoulder the responsibility for rescuing the 1950 and 1974 UMWA Benefit Trusts and for ensuring that retired UMWA miners receive the lifetime health benefits promised to them by later NBCWA signatories. It is a coal industry problem which should be solved by the coal industry. Coal operators like Blue Diamond contributed to the problem and should be part of the solution. In other words, an analysis of the third *Connolly* factor favors upholding the constitutionality of the challenged legislation.

The Court notes that the constitutionality of the Coal Act has already been subjected to Due Process and Takings Clause challenges in *LTV Steel Co., Inc. v. Shalala* (*In re Chateaugay,* 163 Bankr. 955 (S.D.N.Y. 1993); *Templeton Coal Co. v. Shalala,* 855 F. Supp. 990 (S.D. Ind. 1993); and *Barrick Gold Exploration, Inc. v. Hudson,* 823 F. Supp. 1395 (S.D. Ohio, 1993). All three district courts upheld the constitutionality of the Coal Act. The *LTV Steel* and *Barrick* cases were not brought by operators who, like Blue Diamond, have been nonunion since before 1974. However, the

Templeton case, like the one before this Court, was brought by operators who last signed NBCWAs in the 1950s and early 1960s.

The *Templeton* court applied the three *Connolly* factors and felt that the plaintiffs' showing under their Takings Clause challenge was insufficient to justify issuing a preliminary injunction. But it pointed out that it was making its ruling in the "exaggeratedly rapid atmosphere of a preliminary injunction proceeding." 855 F. Supp. at 1004. It suggested that the super-reachback provisions of the Coal Act must be "at the very edge of the broad range of permissible legislative allocation of specific economic burdens ... perhaps ... over the edge." *Id.* The *Templeton* court continued,

> The imposition of retiree health care costs on the Plaintiffs now, thirty or forty years after their exit from the industry, certainly has a draconian air about it. By no means does the court view the Plaintiffs' challenge to the Coal Act as a frivolous attack. However, the character of the decision to allocate responsibility for this economic burden to former participants in the industry does not seem to be different in character from the liability constitutionally imposed for Black Lung disease benefits, pension funding, and environmental contamination as discussed in the cases cited above. *Id.*

This Court has no more idea than the *Templeton* court where the line should be drawn in constitutional challenges to

economic legislation. If the super-reachback provision of the Coal Act does not cross the line, it must step right up to it. Nevertheless, the Coal Act must be viewed as a rational legislative response to a crisis in coal retiree health benefits. It is the product of legislative thought, analysis and compromise and there is no evidence that Congress acted arbitrarily or without prior substantive investigation and debate. The fact that Blue Diamond ceased contributing to UMWA benefit trusts in 1964, should not relieve it of responsibility in this instance. It would be unfair if the lifetime health care costs of Blue Diamond's own retirees were to be born by its competitors in the coal industry. And, although the Coal Act also requires Blue Diamond to pay a proportionate share of financing the health care benefits of orphan retirees, who never were its employees, this aspect of the statute is, in fact, very similar to provisions already found constitutional in the MMPAA. Congress has weighed the alternatives and rationally determined that the costs of providing such benefits for orphan retirees should be borne by NBCWA coal operators who, at least at one time, voluntarily chose to participate in a multiemployer health care system.

III. CONCLUSION

In conclusion, the Court FINDS that the super-reachback provision of the Coal Act violates neither the Due Process nor the Takings Clause of the Fifth Amendment to the United States Constitution. Blue Diamond's motion for summary judgment will be denied and the motions filed by the Secretary of Health and Human Services and by the Trustees of the Combined Fund will be granted.

ENTER:

/s/_____
THOMAS G. HULL
UNITED STATES DISTRICT JUDGE

Supreme Court, U.S.
FILED
OCT 1 2001

No. 01-184

In the Supreme Court of the United States

BLUE DIAMOND COAL COMPANY,
Petitioner,
v.
LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY,
AND
MICHAEL H. HOLLAND, WILLIAM P. HOBGOOD, MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOT A. SEGAL, CARL E. VAN HORN, GAIL R. WILENSKY, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND IN OPPOSITION

JOHN R. MOONEY
ELIZABETH A. SAINDON
MOONEY, GREEN, BAKER AND SAINDON, P.C.
1920 L Street, N.W., Suite 400
Washington, D.C. 20036
(202) 783-0010

PETER BUSCEMI
Counsel of Record
MORGAN, LEWIS & BOCKIUS LLP
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7000

DAVID W. ALLEN
Office of the General Counsel
UMWA HEALTH & RETIREMENT FUNDS
2121 K Street, N.W.
Washington, D.C. 20037
(202) 521-2220

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

Whether the court of appeals correctly ruled that the district court abused its discretion in granting petitioner's motion to reopen a four-year-old final judgment under Fed. R. Civ. P. 60(b)(6), where:

(a) petitioner sought relief solely on the basis of this Court's decision in Eastern Enterprises v. Apfel, 524 U.S. 498 (1998);

(b) the judgment at issue has no prospective effect;

(c) the purpose of petitioner's motion was solely to recover monies previously paid by petitioner and already used to provide health care to petitioner's retirees and their dependents; and

(d) petitioner voluntarily elected to forgo full pursuit of its appellate remedies, by abandoning any argument under the Due Process Clause in its previous petition for a writ of certiorari.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

FEDERAL RULE OF CIVIL PROCEDURE INVOLVED 2

STATEMENT OF THE CASE 2

A. Historical Background 2

B. Proceedings in the Courts Below 4

ARGUMENT 8

A. Blue Diamond's Position Is Contrary to Substantial Authority From This Court and Other Federal Courts That Rule 60(b)(6) Does Not Permit Unsuccessful Parties To Relitigate Their Claims Following a Change in Decisional Law ... 10

B. Rule 60(b)(6) Does Not Permit Parties to Relieve Themselves of Their Free and Deliberate Litigation Choices 17

C. Blue Diamond's Notions of "Equal Justice" Do Not Support Its Request for Rule 60(b)(6) Relief 20

CONCLUSION 29

TABLE OF AUTHORITIES

CASES

Ackermann v. United States, 340 U.S. 193 (1950) 11, 19

Agostini v. Felton, 521 U.S. 203 (1997) 11

Bailey v. Ryan Stevedoring Co., Inc., 894 F.2d 157 (5th Cir.), cert. denied, 498 U.S. 829 (1990) 12

Barrick Gold Exploration, Inc. v. Hudson, 47 F.3d 832 (6th Cir.), cert. denied, 513 U.S. 813 (1995) 3

Berryhill v. United States, 199 F.2d 217 (6th Cir. 1952) 11-12

Biggins v. Hazen Paper Co., 111 F.3d 205 (1st Cir.), cert. denied, 522 U.S. 952 (1997) .. 11

In re Blue Diamond Coal Co. (*Blue Diamond Coal Co. v. Shalala*), 79 F.3d 516 (6th Cir. 1996), cert. denied, 519 U.S. 1055 (1997) 3, 4

Butz v. Economou, 438 U.S. 478 (1978) 16

Carbon Fuel Co. v. USX Corp., 100 F.3d 1124 (4th Cir. 1996) 3

Carter v. Romines, 593 F.2d 823 (8th Cir. 1979) 12

In re Chateaugay Corp. (*LTV Steel Co. v. Shalala*), 53 F.3d 478 (2d Cir.), cert. denied, 516 U.S. 913 (1995) 3

Chicot Co. Drainage District v. Baxter State Bank, 308 U.S. 371 (1940) 14-15

Cincinnati Insurance Co. v. Flanders Elect. Motor Services, Inc., 131 F.3d 625 (7th Cir. 1997) 11

Collins v. City of Wichita, 254 F.2d 837 (10th Cir. 1958) 12, 13

Coltec Industrial, Inc. v. Hobgood, 184 F.R.D. 60 (W.D. Pa. 1999) 8, 23

Davon Inc. v. Shalala, 75 F.3d 1114 (7th Cir.), cert. denied, 519 U.S. 808 (1996) 3

DeWeerth v. Baldinger, 38 F.3d 1266 (2d Cir.), cert. denied, 513 U.S. 1001 (1994) 11, 13

Dowell v. State Farm Fire & Casualty Automobile Insurance Co., 993 F.2d 46 (4th Cir. 1993) 12

Eastern Enterprises v. Apfel, 524 U.S. 498 (1998) ..... *passim*

Erie R.R. v. Tompkins, 304 U.S. 64 (1938) 7

First American National Bank v. Bonded Elevator, Inc., 111 F.R.D. 74 (W.D. Ky. 1986) 24

Gondeck v. Pan American World Airways, 382 U.S. 25 (1965) 24

Holland v. Keenan Trucking Co., 102 F.3d 786 (4th Cir. 1996) 3

Holland v. Virginia Lee Co., 188 F.R.D. 241 (W.D. Va. 1999) 8, 22-23

Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291 (6th Cir. 1989) 11, 20

James B. Beam Distilling Co. v. Georgia, 501 U.S. 529 (1991) 15-16, 18

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988) 6, 11

Lindsey Coal Mining Co. v. Chater, 90 F.3d 688 (3d Cir. 1996) 3

Lindsey Coal Mining Co. Liquidating Trust v. Apfel, No. 94-143 (W.D. Pa. 1999) 8, 23

Local 322, Allied Industrial Workers of America v. Johnson Controls, Inc., 969 F.2d 290 (7th Cir. 1992) 19-20

Marquip, Inc. v. Fosber America, Inc., 198 F.3d 1363 (Fed. Cir. 1999) 11

Marshall v. Board of Education, 575 F.2d 417 (3d Cir. 1978) 13

Montana v. United States, 440 U.S. 147 (1979) 10-11

Norman v. Nichiro Gyogyo Kaicha, Ltd., 761 P.2d 713 (Alas. 1988) 25

Olle v. Henry & Wright Corp., 910 F.2d 357 (6th Cir. 1990) 6

Pierce v. Cook & Co., 518 F.2d 720 (10th Cir. 1975) 24

Teague v. Lane, 489 U.S. 288 (1989) 16

Templeton Coal Co. v. Apfel, No. TH 93-158-C-T/H (S.D. Ind. 1999) ... 8, 22

Unity Real Estate Co. v. Holland, 178 F.3d 649 (3d Cir.), cert. denied, 528 U.S. 963 (1999) 2-3

Usery v. Board of Regents for Okla. Agriculture & Mech. Colleges, 22 Fed.R.Serv.2d 1474 (E.D. Okla. 1976) 13

Yee v. City of Escondido, California, 503 U.S. 519 (1992) 20

FEDERAL STATUTES AND RULE

28 U.S.C. § 1292(b) 6

Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 et seq. and 30 U.S.C. § 1232(h) ..... *passim*

Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, Title V, 1999 U.S.C.C.A.N. (113 Stat.) 1501, 1501A-214 27

Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, Title VII, § 701(a), 2000 U.S.C.C.A.N. (114 Stat.) 922, 1024-25 ..... 23, 27

Fed. R. Civ. P. 60(b)(6) ..... *passim*

Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§105(a)(2)(A), 108(h)(9)(A), 108 Stat. 1472, 1487-88 (1994) 3-4

MISCELLANEOUS

H.R. 4713, 106th Cong., 2d Sess. § 213 (2000) .. 24

S. 2729, 106th Cong., 2d Sess. § 213 (2000) . 23-24

12 J.W. Moore, Moore's Federal Practice § 60.48[5][b] (3d ed. 1997) 13-14

12 J.W. Moore, Moore's Federal Practice §60.48[5][c] (3d ed. 1997) 14

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2001

No. 01-184

BLUE DIAMOND COAL COMPANY,
Petitioner,
v.

LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY,
AND
MICHAEL H. HOLLAND, WILLIAM P. HOBGOOD, MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOT A. SEGAL, CARL E. VAN HORN, GAIL R. WILENSKY, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

BRIEF FOR THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 249 F.3d 519. The opinion of the district court (Pet. App. 19a-29a) is unreported. The earlier decision of the district court (Pet. App. 30a-48a) is reported at 174 B.R. 722. The earlier opinion of the court of appeals is reported at 79 F.3d 516.

FEDERAL RULE OF CIVIL PROCEDURE INVOLVED

Fed. R. Civ. P. 60(b)(6) provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason justifying relief from the operation of the judgment.

STATEMENT OF THE CASE

A. Historical Background

In October 1992, Congress enacted the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 et seq. and 30 U.S.C. § 1232(h) (the "Coal Act"), to ensure the continuation of health benefits for retired coal miners and their families. Many of the retired miners covered by the statute had been employed by petitioner Blue Diamond Coal Company ("Blue Diamond"). For nearly three decades before enactment of the statute, such retirees and their eligible dependents had received health benefits from the collectively bargained UMWA multiemployer health care system, even though Blue Diamond itself ceased all contributions to the system in 1964.

The Coal Act was passed to remedy a financial crisis that threatened the solvency of the collectively bargained UMWA multiemployer system, which, by the time Congress acted, was providing health benefits to more than 100,000 beneficiaries. The history of this financial crisis and the events leading to enactment of the Coal Act have been reviewed at some length by this Court and several federal courts of appeals. Eastern Enterprises v. Apfel, 524 U.S. 498, 504-15 (1998) (plurality opinion); Unity Real Estate Co. v. Holland, 178 F.3d

649 (3d Cir.), cert. denied, 528 U.S. 963 (1999); In re Blue Diamond Coal, Co. (Blue Diamond Coal Co. v. Shalala), 79 F.3d 516 (6th Cir. 1996), cert. denied, 519 U.S. 1055 (1997); Lindsey Coal Mining Co. v. Chater, 90 F.3d 688 (3d Cir. 1996); Holland v. Keenan Trucking Co., 102 F.3d 786 (4th Cir. 1996); Carbon Fuel Co. v. USX Corp., 100 F.3d 1124 (4th Cir. 1996); Davon Inc. v. Shalala, 75 F.3d 1114 (7th Cir.), cert. denied, 519 U.S. 808 (1996); In re Chateaugay Corp. (LTV Steel Co. v. Shalala), 53 F.3d 478 (2d Cir.), cert. denied, 516 U.S. 913 (1995); Barrick Gold Exploration, Inc. v. Hudson, 47 F.3d 832 (6th Cir.), cert. denied, 513 U.S. 813 (1995).

Given this extensive precedent, we do not rehearse here the nearly 50 years of collective bargaining history that eventually led to enactment of the Coal Act. For present purposes, it suffices to observe that Congress provided in the statute for the creation of two new statutory trust funds. One of these funds, the UMWA Combined Benefit Fund (the "Combined Fund"), is at issue in this case. Congress directed that the two pre-existing collectively bargained multiemployer health care plans -- the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan -- be merged into the Combined Fund as of February 1, 1993. Under Section 9706 of the Coal Act, individual beneficiaries of the Combined Fund then were assigned to specific former employers (or to related persons to such employers) under the statutory criteria prescribed by Congress.[1/] 26 U.S.C. § 9706. The employers receiving such

---

1/Originally, the Coal Act provided that the Secretary of Health and Human Services would perform the assignment of Combined Fund beneficiaries. The Secretary delegated this task to the Commissioner of Social Security. Thereafter, in 1994, Congress transferred the statutory responsibility directly to the Commissioner. See Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§

assignments were (and are) required to pay annual premiums to the Combined Fund to finance the assigned beneficiaries' health care.

B. Proceedings in the Courts Below

On May 24, 1993, less than four months after the Combined Fund began providing health benefits and well before any Combined Fund beneficiaries were assigned or annual premiums assessed, Blue Diamond filed suit against the Trustees of the Combined Fund and the Secretary of Health and Human Services, claiming that the Coal Act, as applied to Blue Diamond, violated the Due Process and Takings Clauses of the Fifth Amendment. The parties cross-moved for summary judgment.

The district court, like the three other federal courts that previously had ruled on the constitutionality of the Coal Act, granted summary judgment in favor of the Secretary and the Trustees. Pet. App. 30a-48a. The court of appeals affirmed. 79 F.3d 516 (6th Cir. 1996).

Blue Diamond petitioned this Court for a writ of certiorari. Although Blue Diamond had argued in both the district court and the court of appeals that the Coal Act as applied to it violated the Due Process Clause and the Takings Clause of the Fifth Amendment, Blue Diamond abandoned its due process challenge in this Court and sought review only on its takings theory. This Court denied Blue Diamond's petition. 515 U.S. 1055 (1997).

A year and a half later, this Court issued its divided decision in Eastern. A plurality of four Justices concluded that

---

105(a)(2)(A), 108(h)(9)(A), 108 Stat. 1472, 1487-88 (1994).

the Coal Act, as applied to Eastern, effected an unconstitutional taking. 524 U.S. at 529-37. Justice Kennedy determined that the Takings Clause does not provide the appropriate basis for review of economic regulatory legislation like the Coal Act. In that regard, he agreed with the four dissenting Justices. Justice Kennedy also concluded, however, that, as applied to Eastern, the Coal Act violated the Due Process Clause. Id. at 547-50 (Kennedy, J., concurring in the judgment and dissenting in part). The plurality declined to reach the due process issue, but observed that the Court previously "has expressed concerns about using the Due Process Clause to invalidate economic legislation." Id. at 537.

On August 28, 1998, two months after this Court decided Eastern, Blue Diamond moved to vacate the district court's four-year-old final judgment. Blue Diamond claimed that there were "extraordinary circumstances" justifying relief under Rule 60(b)(6). The Trustees and the Commissioner opposed the motion.

While Blue Diamond's motion was pending, the Commissioner notified coal companies that were similarly situated to Eastern, including Blue Diamond, that their assignments of Combined Fund beneficiaries under the Coal Act were void. As a result, Blue Diamond discontinued all premium payments to the Combined Fund. Indeed, Blue Diamond has not made, and the Combined Fund has not sought from Blue Diamond, any premium payments since June 1998, when Eastern was decided. Blue Diamond has no future obligation to pay health care premiums to the Combined Fund. Consequently, by the time briefing of Blue Diamond's motion to vacate the judgment was completed in the district court, it was clear that the November 1994 judgment would have no prospective effect and that Blue Diamond's sole purpose in pursuing its motion was to demand a refund of premiums

previously paid under the statute and already used to provide health benefits to Blue Diamond's retirees and their families.

On November 4, 1998, the district court granted Blue Diamond's motion, vacated the final judgment, and restored the case to the court's active docket for further proceedings. Pet. App. 21a-29a. The district court acknowledged that subsequent changes in decisional law do not provide the "exceptional or extraordinary circumstances" needed to justify relief under Rule 60(b)(6). Id. at 24a, 26a. The court also acknowledged that Blue Diamond sought only to recover past monies paid and not any prospective relief. Id. at 25a. Nonetheless, the court ruled that it would be "unfair" to allow the previous judgment to stand. Id. at 28a. Although the court recognized that the Coal Act is neither an "accident" or a single contractual transaction, it relied heavily on a handful of cases in which courts have invoked Rule 60(b) to harmonize the legal outcome for victims of the same accident. The court stated that one could argue that the coal companies affected by Eastern were "part of the same transaction." Id.

The Trustees moved to certify the district court's order for interlocutory appeal under 28 U.S.C. § 1292(b). The district court granted that motion, and the court of appeals agreed to hear the interlocutory appeal. Pet. App. 6a.

After full briefing and argument, the court of appeals reversed. Citing its earlier decision in Olle v. Henry & Wright Corp., 910 F.2d 357, 365 (6th Cir. 1990), and this Court's ruling in Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 863-64 (1988), the court explained that Rule 60(b)(6) relief is available "only in 'unusual and extreme situations where principles of equity mandate relief.'" Pet. App. 8a. The court further observed that "a change in decisional law is usually not, by itself, an extraordinary circumstance meriting Rule 60(b(6) relief." Id.

The court of appeals rejected the district court's reliance on the "same accident" or "same transaction" line of cases. Pet. App. 9a-13a. The court explained that most such cases involved situations in which a federal court sitting in diversity and a state court have come to opposite conclusions as to the application of state law to an individual set of facts. Id. at 11a. The cases thus implicated the rule under Erie R.R. v. Tompkins, 304 U.S. 64 (1938), that state law should be "outcome-determinative" in diversity cases. No such considerations are present here. Moreover, the court of appeals said, the cases cited by Blue Diamond and the district court "involve[d] transactions with a much tighter nexus of common activity, common rights, and common liability than a law passed by Congress to regulate the payment of medical health benefits to the retirees of an entire industry." Pet. App. 11a. The court declined to treat a federal regulatory statute as if it were a single commercial transaction, explaining that such an approach would mean that any company in an industry subject to extensive federal regulation would be able to claim Rule 60(b)(6) relief whenever judicial interpretation of the applicable law changed. Id. at 12a.

In weighing the equities, the court of appeals found that the district court was simply wrong in thinking that Blue Diamond is the only company whose Combined Fund beneficiary assignments were declared void and that did not receive a refund of amounts previously paid to the Combined Fund. In fact, as the court of appeals recognized, there are at least 13 such companies, including Blue Diamond, that did not receive refunds from the Combined Fund "due to a pre-Eastern Enterprises final judgment or settlement." Pet. App. 14a. The court of appeals concluded that the strong interest in finality of judgments, coupled with the Combined Fund's reliance on the judgment entered in this case and its use of Blue Diamond's past premiums to pay for health care for Blue Diamond's

retirees and their dependents, militated heavily in favor of adhering to the original judgment. Id. at 17a.

ARGUMENT

The court of appeals applied the well-established legal standards governing relief under Rule 60(b)(6), and it did so with proper regard for the principles of finality and equity at issue here. The court reached the same result as federal courts have reached in all of the other cases in which companies have sought to reopen final judgments for the sole purpose of obtaining retrospective monetary relief after unsuccessful challenges to the Coal Act. See Holland v. Virginia Lee Co., 188 F.R.D. 241 (W.D. Va. 1999); Coltec Indus., Inc. v. Hobgood, 184 F.R.D. 60 (W.D. Pa. 1999), appeals pending, Nos. 00-2458 and 00-4385 (3d Cir. argued Sept. 19, 2001); Lindsey Coal Mining Co. Liquidating Trust v. Apfel, No. 94-143 (W.D. Pa. 1999); Templeton Coal Co. v. Apfel, No. TH 93-158-C-T/H (S.D. Ind. 1999).[2/] Like these other rulings, the court of appeals' decision here is correct, and further review is not warranted.

Contrary to petitioner's assertion, this case presents no unsettled question of federal law and no conflict with prior decisions. Rather, petitioner is attempting to use Rule 60(b)(6) as a means of avoiding the past financial consequences of its own voluntary litigation choices. As federal courts routinely have held, that does not constitute the sort of exceptional or extraordinary circumstance needed to justify relief under Rule 60(b)(6). Petitioner has been treated identically with all other assigned operators under the Coal Act whose beneficiary assignments were declared void after Eastern but who

---

2/The unreported decisions in Lindsey and Templeton are reproduced as an appendix to this brief.

previously had unsuccessfully pursued to final judgment their own constitutional challenges to the statute. There is no basis for retrospectively disturbing these results.

Petitioner's protestations of unfairness are misguided. Petitioner voluntarily chose its own litigation strategy. It elected to file one of the first actions challenging the Coal Act. It filed its complaint even before it had been assigned any Combined Fund beneficiaries or assessed any Coal Act premiums. It selected its forum, its counsel, and its legal arguments for attacking the statute. It forced the government and the Trustees to defend against its action in the district court, the court of appeals, and this Court. Not surprisingly, Blue Diamond's litigation choices, like those of any other litigant, have real-world consequences. They involve both risk and reward. Litigation must end at some point, and final judgments should remain final, even (perhaps especially) in cases involving constitutional claims. If final judgments could be reopened whenever a higher court later reached a different result in another case, no judgment would ever be anything more than a tentative outcome, and no prevailing party could ever rely on a favorable ruling.

Blue Diamond's claims of inequity blithely ignore the real-world consequences of permitting Blue Diamond now to revisit legal strategies that it wishes it had not adopted several years ago. If Blue Diamond had its way, the extensive litigation costs imposed on the government and the Combined Fund's beneficiaries by Blue Diamond's 1993 action would count for naught. The federal courts' adjudication of Blue Diamond's claims would be rendered a nullity. Moreover, according to Blue Diamond, premium payments that the Combined Fund long ago used to provide health benefits to Blue Diamond's retirees and their families now should be refunded to Blue Diamond. The inevitable result would be that other coal companies would be subjected to additional assessments (over

and above the supplemental assessments already imposed as a result of refunds after Eastern), and additional demands would be placed on limited public funds (namely, the interest earned by the Abandoned Mine Land Reclamation Fund (the "AML Fund") established under the Surface Mining Control and Reclamation Act of 1977). See 30 U.S.C. § 1232(h).

The fundamental flaw in Blue Diamond's equitable arguments is that they fail to recognize that Blue Diamond is not in fact similarly situated to the other coal operators to which Blue Diamond seeks to compare itself. Unlike those other companies, Blue Diamond and several other signatories to pre-1974 coal wage agreements unsuccessfully litigated to a conclusion their constitutional challenges to the Coal Act before Eastern. All of these similarly situated "final judgment" companies have been treated alike. Equity requires no more.

A. Blue Diamond's Position Is Contrary to Substantial Authority From This Court and Other Federal Courts That Rule 60(b)(6) Does Not Permit Unsuccessful Parties To Relitigate Their Claims Following a Change in Decisional Law.

The question for which Blue Diamond seeks review is not in fact presented by this case. Blue Diamond asks (Pet. i) whether Rule 60(b)(6) grants federal district courts discretion to reopen judgments in certain circumstances. That point is not disputed; the court of appeals ruled that, although Rule 60(b)(6) does give district courts discretionary authority to reopen judgments in exceptional or extraordinary circumstances, the district court abused that discretion in granting Blue Diamond's motion in this case. Pet. App. 7a-8a, 18a. That decision is fully supported by the relevant authorities.

One of the primary purposes of the federal courts is "the conclusive resolution of disputes within their jurisdiction."

Montana v. United States, 440 U.S. 147, 153 (1979). Because of the strong interest in the finality of judgments, the Federal Rules allow such judgments to be revisited only in very limited circumstances. Courts uniformly hold that Rule 60(b)(6) is to be invoked only in exceptional or extraordinary cases. Liljeberg v. Health Services Corp., 486 U.S. 847, 864 (1988); Marquip, Inc. v. Fosber America, Inc., 198 F.3d 1363, 1370 (Fed. Cir. 1999); Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th Cir. 1989). As this Court said more than fifty years ago, "[t]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." Ackermann v. United States, 340 U.S. 193, 198 (1950).

This Court and others repeatedly have held that "[i]ntervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." Agostini v. Felton, 521 U.S. 203, 239 (1997). Accord, Cincinnati Ins. Co. v. Flanders Elect. Motor Services, Inc., 131 F.3d 625, 628 (7th Cir. 1997) ("Generally, a change in state decisional law is insufficient to constitute an extraordinary circumstance warranting relief under Rule 60(b)."); Biggins v. Hazen Paper Co., 111 F.3d 205, 212 (1st Cir.), cert. denied, 522 U.S. 952 (1997) ("absent extraordinary circumstances, we would think it dubious practice to reopen a final judgment under Rule 60(b)(6) solely because of later precedent pointing in a different direction."); DeWeerth v. Baldinger, 38 F.3d 1266, 1272-73 (2d Cir.), cert. denied, 513 U.S. 1001 (1994) (subsequent case law demonstrating that prior judgment was based on an erroneous interpretation of law was not proper grounds for reopening a four-year-old judgment); Berryhill v. United States, 199 F.2d 217, 219 (6th Cir. 1952) ("a change in the judicial view of the applicable law, after a final

judgment, is not a basis for vacating a judgment entered before announcement of the change.").[3]

This rule applies with equal force in cases raising constitutional claims. For example, in Collins v. City of Wichita, 254 F.2d 837 (10th Cir. 1958), the plaintiff challenged the constitutionality of the notice provisions of a condemnation statute. Like Blue Diamond, the plaintiff lost in the trial court and lost on appeal. In a later case involving the same statute, this Court held that the notice provisions of the statute were unconstitutional. As in this case, the plaintiff moved to vacate the judgment in light of this Court's decision. The district court denied plaintiff's motion for Rule 60(b)(6) relief, and the Tenth Circuit affirmed, explaining that "[l]itigation must end some time, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry,

---

3/See also Dowell v. State Farm Fire & Casualty Automobile Ins. Co., 993 F.2d 46, 48 (4th Cir. 1993) ("a change in decisional law subsequent to a final judgment provides no basis for relief under Rule 60(b)(6)"); Bailey v. Ryan Stevedoring Co., Inc., 894 F.2d 157, 160 (5th Cir.), cert. denied, 498 U.S. 829 (1990) ("Rule 60(b) does not give the right to reopen litigation finally concluded over two years previously on the grounds of a change in the law"); Carter v. Romines, 593 F.2d 823, 824 (8th Cir. 1979) ("Our affirmance of the district court's dismissal of Carter's complaint, coupled with the Supreme Court's denial of certiorari, barred Carter from returning to the district court to reargue the issues resolved against him"; this "rule is unaffected even if . . . a change in the law occurred after the judgment was affirmed on appeal.").

does not justify setting it aside." Id. at 839.[4] See also DeWeerth, 38 F.3d at 1273 (the principle that a change in decisional law does not warrant Rule 60(b)(6) relief "also applies in federal cases where the Supreme Court has changed the applicable rule of law."); Usery v. Bd. of Regents for Okla. Agric. & Mech. Colleges, 22 Fed. R. Serv. 2d 1474 (E.D. Okla. 1976) (subsequent decision declaring unconstitutional the provisions of the Fair Labor Standards Act on which consent judgment was issued did not provide sufficient grounds for granting Rule 60(b)(6) relief with respect to the executed damage provisions of that judgment); Marshall v. Board of Education, 575 F.2d 417, 425 (3d Cir. 1978) (holding, even after this Court declared the FLSA unconstitutional as applied to state entities, that "a judgment at law for damages for past wrongs is inherently final and remains unaffected by a subsequent change in the law.") (internal quotation and citations omitted).[5]

4/Blue Diamond tries to distinguish Collins by arguing that the result here is more "unfair" than the outcome in Collins. As already explained, however, there is nothing at all unfair about recognizing the finality of the judgment against Blue Diamond in the circumstances of this case. Moreover, Blue Diamond's assertion that the plaintiffs in Collins had received just compensation for their property by the time of the court's decision is not correct. The court of appeals simply observed that litigation was continuing regarding these matters. No compensation had been provided, and there is no indication that the plaintiffs believed that any amount they would receive would be "just." Collins, 254 F.2d at 839 n.2.

5/Blue Diamond cites 12 J.W. Moore, Moore's Federal Practice § 60.48[5][b], at 60-181 to 60-182.1 (3d ed. 1997), for the proposition that Rule 60(b)(6) relief "would make 'perfect sense' to remedy divergent judgments on the constitutionality

Blue Diamond nevertheless attempts to distinguish between "a change in decisional law and this Court's invalidation of a statute under the Constitution." Pet. 13. According to Blue Diamond, when this Court declares a statute unconstitutional, the statute is stripped of all legal effect and must be regarded as if it were never a law at all. From this premise, Blue Diamond argues that any actions taken in reliance on such a statute must be undone.

But this is not the way courts treat invalidated legislation. Indeed, this Court expressly has rejected such an approach. In Chicot Co. Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940), the Court considered the effects of its decision declaring a statute unconstitutional. Specifically, the Court held that:

> broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. . . . Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon

---

of a single statute" after this Court has ruled on the statute. Pet. 15. Although the treatise does state that a change in decisional law may be considered on a Rule 60(b)(6) motion in a case involving the same statute, it also emphasizes that this is but one factor to consider and that "[t]here are few decisions that permit relief from a judgment under Rule 60(b)(6) when there is a change in decisional law after final judgment." Id. § 60.48[5][c], at 60-183.

> accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. . . . [I]t is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

Id. at 374 (emphasis added).

More recently, in James B. Beam Distilling Co. v. Georgia, 501 U.S. 529 (1991), the Court revisited the question whether the invalidation of a statute operates automatically to invalidate acts that previously have become final and settled under the statute. Announcing the judgment of the Court, Justice Souter explained:

> Of course, retroactivity in civil cases must be limited by the need for finality; once a suit is barred by res judicata or by statutes of limitation or repose, a new rule cannot reopen the door already closed.
>
> * * *
>
> Insofar as equality drives us, it might be argued that the new rule should be applied to those who had toiled and failed, but whose claims are now precluded by res judicata; and that it should not be applied to those who only exploit others' efforts by litigating in the new rule's wake.
>
> * * *
>
> While those whose claims have been adjudicated may seek equality, a second chance for them could only be purchased at the expense

> of another principle. "'Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of that contest, and that matters once tried shall be considered forever settled as between the parties.'"

Id. at 541-42 (opinion of Souter, J., joined by Stevens, J., announcing the judgment of the Court) (citations omitted) (emphasis added).[6/]

Thus, contrary to Blue Diamond's claim, this Court has definitively addressed the issue of reopening final judgments following a change in the law, and the fact that this case involves a constitutional issue does not affect the Court's reasoning. As the court of appeals explained, "our system of law does not privilege certain rights, constitutional or not, over others." Pet. App. 13a (citing Butz v. Economou, 438 U.S. 478, 523 (1978) (Rehnquist, J., concurring in part and dissenting in part) ("That the Framers thought some rights sufficiently susceptible of legislative derogation that they should be enshrined in the Constitution does not necessarily indicate that the Framers likewise intended to establish an immutable hierarchy of rights in terms of their importance to individuals.").

6/Even in the criminal context where an individual's freedom is at stake, this Court has held that judgments are not to be reopened based on new rules of constitutional law. See Teague v. Lane, 489 U.S. 288 (1989) (new rules in criminal cases will not relate back to convictions challenged in habeas corpus proceedings).

B. Rule 60(b)(6) Does Not Permit Parties to Relieve Themselves of Their Free and Deliberate Litigation Choices.

Blue Diamond claims that "as one of the first litigants" to challenge the Coal Act, it is being treated unfairly "for no better reason than [that] it raised" its constitutional objections in the first place. Pet. 7. Blue Diamond asserts that, unless the district court's November 1994 judgment is reopened, the constitutional rights of litigants like Blue Diamond will become "sacrificial offerings gathered by the federal judicial system". Id. at 10. This is nonsense.

Shortly after the passage of the Coal Act, Blue Diamond made a deliberate, strategic choice to initiate litigation against the Combined Fund and HHS. Rather than sit on the sidelines while other companies tested the constitutional waters, Blue Diamond made a calculated decision to be one of the first companies to file suit. As a result of that decision, Blue Diamond was able to frame the arguments as it saw fit. Because it was one of the first companies to sue, Blue Diamond was able to develop its legal strategy without concern for earlier decisions addressing the validity of the Coal Act. Moreover, Blue Diamond was able to engage in early discovery and to require the Combined Fund and the government to commit to their litigating positions early, without the benefit of prior briefing and rulings under the Act and without additional time to develop their arguments.

Blue Diamond selected its home forum (the Eastern District of Tennessee) for its Coal Act challenge. It also selected counsel and the precise timing of its action. Rather than withholding premiums and waiting until the Combined Fund demanded payment, Blue Diamond chose of its own accord to initiate an adversary proceeding in bankruptcy court. The Combined Fund was forced to expend its own resources

first to withdraw the proceeding to district court (a motion that Blue Diamond opposed) and then to defend the suit. Had it not been for Blue Diamond's action, this money could have been used to provide health benefits for the thousands of Combined Fund beneficiaries.

But Blue Diamond's decision to file suit early also had a downside, namely, that its case would be one of the first decided, and one of the first to proceed to final judgment. With the benefit of hindsight, Blue Diamond now wishes that it had waited to pursue its constitutional claims, so that it could capitalize on another coal operator's victory. That does not mean, however, that there is anything "arbitrary" about holding Blue Diamond to the result of its own litigation, with respect to sums already paid to and used by the Combined Fund. See James B. Beam, 501 U.S. at 541 (opinion of Souter, J., announcing the judgment of the Court) (not "arbitrary" to distinguish between early litigant who files suit and loses, and later litigant who enjoys benefit of new rule).

The finality of the judgment against Blue Diamond is no more a discouragement to litigation than the prospect of defeat in any lawsuit. There are always consequences from choosing to litigate, and other consequences follow from each choice made in the course of litigation. Enforcing the finality of judgments in no way threatens the development of the law. Plaintiffs who believe that their constitutional rights are being violated will make calculated decisions, as they always have, as to if, when, and where to file suit, and what strategies to follow during litigation. Those who go first and fail ultimately will receive, on a prospective basis, the benefit of any more favorable results that may be achieved by others, just as Blue Diamond has. That others have succeeded where Blue

Diamond failed, however, is not grounds for granting retroactive relief.[7/]

Blue Diamond's effort to obtain relief under Rule 60(b)(6) is flawed for still another reason – Blue Diamond failed fully to pursue its appellate remedies. When Blue Diamond sought review in this Court in September 1996, it deliberately abandoned its due process claim and argued only that the Coal Act, as applied to Blue Diamond, violated the Takings Clause. This was no small omission. As the decision in Eastern shows, Eastern's due process argument was essential to secure the fifth vote in favor of Eastern's position. Five Justices (the four dissenters and Justice Kennedy) concluded that the Takings Clause does not provide the proper basis for determining the validity of economic regulatory legislation like the Coal Act. Blue Diamond thus made a significant litigation choice when it elected not to pursue its due process claim in this Court. That choice makes this case a particularly poor candidate for relief under Rule 60(b)(6).

Parties may not use Rule 60(b)(6) as a substitute for full pursuit of appellate remedies. Ackermann, 340 U.S. at 198. See also Local 322, Allied Indus. Workers of America v. Johnson Controls, Inc., 969 F.2d 290 (7th Cir. 1992) (party that did not petition for certiorari was not entitled to relief from final judgment under Rule 60(b) after this Court granted petitions

---

7/Blue Diamond contends that review is needed to ensure that litigants are not "categorically denied" Rule 60(b)(6) relief. Pet. 10. But this spectre is belied by the express language of the court of appeals' opinion, which acknowledged the need for "a case-by-case inquiry" and stressed that its decision was "merely a determination that, in this case, the district court abused its discretion in granting such relief." Pet. App. 18a (emphasis added).

filed by other parties and reversed court of appeals' decision); Hopper, 867 F.2d at 291 (party that chose not to petition cannot use Rule 60(b) to ride on the coattails of another party who did petition).

It is no answer to say, as Blue Diamond now does (Pet. 6 n.9), that "the omission of a strictly legal issue from a petition for certiorari does not waive it . . . ." This Court's Rule 14.1(a) provides that "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court." This Court routinely refuses to consider questions not presented in the petition, and will consider such issues "'only in the most exceptional circumstances,' where reasons of urgency or of economy suggest the need to address the unpresented question in the case under consideration." Yee v. City of Escondido, California, 503 U.S. 519, 535 (1992) (citation omitted). Blue Diamond's petition presented no such circumstances (as the later petition in Eastern confirmed), and Blue Diamond does not even try to contend that its due process claim was "fairly included" within its Takings Clause argument. Relief under Rule 60(b)(6) is not designed to enable a party in these circumstances to avoid the consequences of its litigation choices.

C. Blue Diamond's Notions of "Equal Justice" Do Not Support Its Request for Rule 60(b)(6) Relief.

Blue Diamond's repeated references to "equal justice" are misguided. At all relevant times, Blue Diamond has been treated just like all other similarly situated operators. Blue Diamond's demands for "equal justice" are in reality nothing more than a claim that the final judgment against Blue Diamond must be disregarded in determining which operators are similarly situated. That is not correct.

Prior to Eastern, Blue Diamond was treated just like every other coal operator that challenged the Coal Act. Indeed, Blue Diamond makes no claim that it was in any way subjected to disparate treatment while litigating its constitutional challenges.

Since Eastern, Blue Diamond also has received equal treatment. The assignments of Combined Fund beneficiaries to Blue Diamond were declared void, and Blue Diamond has not made, or been asked to make, any premium payments to the Combined Fund since June 1998. Prospectively, in other words, Blue Diamond has benefitted from Eastern in the same way as other operators that did not sign, and are not related to persons that signed, a coal wage agreement in 1974 or thereafter. Retrospectively, the Combined Fund has treated Blue Diamond in the same way as every other assigned operator against which a final judgment has been entered. Contrary to the impression that Blue Diamond seeks to create, the Combined Fund has in no way singled out Blue Diamond for special treatment. As the record shows, the Combined Fund has not refunded past premiums to any of the 13 companies whose beneficiary assignments were declared void after Eastern but that previously were subject to final judgments entered after litigation or settlement. The total sums initially paid by those

companies were approximately $21.5 million. JA 403.[8] By contrast, the Combined Fund paid refunds to approximately 50 other companies whose beneficiary assignments were declared void and that were not subject to final judgments. The total amount of these refunds was approximately $18.6 million. JA 399.[9]

In four cases other than this one, "final judgment" operators that did not receive refunds from the Combined Fund sought relief under Rule 60(b)(6), and in each case relief was denied. In Templeton Coal Co. v. Apfel, No. TH93-158-C-T/H (S.D. Ind. 1999), for example, the district court explained that "when the law is changed, many (if not most) times that change can be chalked up to notions of fairness or justice. If this were a reason for reopening all final judgments made under the prior law, then there would not be much left of the general rule that a subsequent change in the law will not alone justify Rule 60(b)(6) relief." App. 13a (copy attached). Likewise, in Holland v. Virginia Lee, the district court declined to reopen an earlier final order dismissing the case with prejudice:

> [C]hanges in the law inevitably lead to one or more parties from an earlier litigation feeling

---

8/"JA" refers to the joint appendix in the court of appeals.

9/In an effort to bolster its claims of inequity, Blue Diamond refers to some 124 companies whose Combined Fund beneficiary assignments were declared void after Eastern. As used by Blue Diamond, the number is misleading. Approximately half of these companies never made any premium payments to the Combined Fund and never litigated the validity of the Coal Act against the Combined Fund or the government. When their beneficiary assignments were declared void, no refund issue arose.

> that they have been treated unfairly. As one district court recently noted, "[e]volving legal standards are part and parcel of the legal system in this country. As conditions change, so must some laws. That defendant suffered a judgment and paid damages pursuant to legal doctrine that has subsequently been overruled is an inevitable consequence."

188 F.R.D. at 255-56 (citations omitted). See also Coltec Indus., Inc. v. Hobgood, 184 F.R.D. 60 (W.D. Pa. 1999), appeals pending, Nos. 00-2458 and 00-4385 (3d Cir. argued Sept. 19, 2001); Lindsey Coal Mining Co. Liquidating Trust v. Apfel, No. 94-143 (W.D. Pa. 1999) (copy attached).

In the wake of the decisions in Templeton, Virginia Lee, Coltec, and Lindsey, the "final judgment" operators took their concerns to the Legislative Branch, and Congress provided some relief, although not as much as Blue Diamond would have liked. In particular, in the Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, Title VII, § 701(a)(2), 2000 U.S.C.C.A.N. (114 Stat.) 922, 1024-25, Congress provided for the transfer to the Combined Fund of an additional $2.2 million in interest earned by the AML Fund. This $2.2 million was earmarked to be used to provide refunds, on a proportional basis, to companies situated like Blue Diamond. After considering the issue at some length, Congress thus chose to provide a little more than 10% of the relief that Blue Diamond and other similarly situated companies have sought as refunds from the Combined Fund. This money has now been distributed to Blue Diamond and the other "final judgment" companies.

In enacting this measure, Congress considered and rejected more extensive relief than the measure Congress eventually enacted. See, e.g., S. 2729, 106th Cong., 2d Sess.

§ 213 (2000); H.R. 4713, 106th Cong., 2d Sess. § 213 (2000). One such measure, entitled the "Retired Coal Miners Health Benefit Security Act," was approved by the Senate Finance Committee. It provided for a general appropriation to the Combined Fund in the amount of $77,438,000, $20,438,000 of which was explicitly earmarked for refunds to companies like Blue Diamond.[10/] Although some legislators advocated the full measure of relief sought by Blue Diamond, Congress ultimately chose a more limited remedy that has provided Blue Diamond with a refund of approximately $1.4 million.

The congressional resolution of this issue warrants deference from the courts. Congress already has considered the arguments made by Blue Diamond and others, and it has provided what it determined was the appropriate relief. This recent legislative action thus provides further support for the proposition that Blue Diamond is not entitled to the extraordinary remedy of reopening a fully litigated final judgment under Rule 60(b)(6).

In the court of appeals, Blue Diamond attempted to respond to the authority cited by the government and the Trustees by relying on so-called "same accident" cases, such as Gondeck v. Pan American World Airways, 382 U.S. 25 (1965), and Pierce v. Cook & Co., 518 F.2d 720 (10th Cir. 1975), or "same contract" cases, such as First American Nat'l Bank v. Bonded Elevator, Inc., 111 F.R.D. 74 (W.D. Ky. 1986), and

---

10/A copy of this unnumbered bill and an excerpt from the September 7, 2000 Congressional Record reflecting the favorable action by the Senate Finance Committee were submitted by the Combined Fund to the court of appeals in October 2000 as part of a Notice of Recent Legislation. A copy of this Notice, with its attachments, has been lodged with the Clerk of this Court.

Norman v. Nichiro Gyogyo Kaicha, Ltd., 761 P.2d 713 (Alas. 1988). The court of appeals correctly held that, whatever the justification for these rulings in the specific factual and legal contexts in which they were entered, they have no application here, where the common element is not an accident or private contract, but a federal statute providing for health care for more than 100,000 beneficiaries in an entire industry. Pet. App. 9a-13a.

In its petition, Blue Diamond has modified its earlier argument to some extent. Rather than trying to shoehorn the Coal Act directly into the mold of the "same accident" or "same contract" cases, Blue Diamond maintains that, under the cited decisions, "there are only two possible circumstances that serve to justify the continued recognition of erroneous lower court judgments, upholding a statute declared unconstitutional by this Court." Pet. 8. According to Blue Diamond, these two circumstances are reliance by the victorious party on its favorable judgment and a waiver of rights by the losing party. Id. at 8-9.

Apart from the fact that Blue Diamond does not explain how it has distilled its proposed rule from the cited cases, and apart from the fact that acceptance of Blue Diamond's approach would render Rule 60(b)(6) relief the rule rather than the exception, Blue Diamond would not prevail even on its own view of the law. First, as discussed previously, Blue Diamond waived its right to Rule 60(b)(6) relief by failing fully to pursue its appellate remedies. Second, the Combined Fund substantially relied on the final judgment it received against Blue Diamond. As the court of appeals correctly concluded (Pet. App. 17a):

> [T]he reliance interest of the Combined Fund on the previous final judgment is substantial. Four years had elapsed between the district court's

> declaratory judgment and its subsequent grant of post-judgment relief. During that time, payments made to the Combined Fund pursuant to the previous decision were used to cover the medical health benefits of numerous retirees.

Blue Diamond contends, however, that the Combined Fund could not reasonably have relied on the judgment, because the judgment did not impose on Blue Diamond an affirmative obligation to pay Combined Fund premiums, and because the Combined Fund used all of its premium income, not just that received from Blue Diamond, to pay for retiree health care. Pet. 12. Both points are non sequiturs.

Having unsuccessfully attacked the validity of the statute, Blue Diamond had no basis for refusing to comply with the law. That point was just as obvious to the Combined Fund as it was to Blue Diamond itself. Moreover, the fact that the Combined Fund used not only Blue Diamond's premiums but all of the premium income that it received from all of the assigned operators only reinforces the point that the Combined Fund relied on the judgment. The Combined Fund has needed all of the revenue authorized by the statute to fulfill its statutory obligation to provide health benefits to the Fund's beneficiaries. Indeed, after Eastern the Combined Fund was obliged to impose supplemental assessments on the remaining participating employers in the Fund to replace amounts no longer available to the Combined Fund because of this Court's decision. In addition, due to the continuing escalation of health care costs, Congress twice recently appropriated additional sums to address the Combined Fund's financial difficulties.[11/]

11/In both instances, these special appropriations involved additional transfers from the AML Fund, over and above the transfers specified in the Coal Act itself. First, on November

The court of appeals thus correctly determined that the Combined Fund and its Trustees relied heavily on the money received from Blue Diamond and had every reason to trust in the finality of the judgment against Blue Diamond.[12/]

29, 1999, Congress provided for the special transfer of $68,000,000 in interest credited to the AML Fund "to pay the amount of any shortfall in any premium account for any plan year under the Combined Fund." Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, Title V, 1999 U.S.C.C.A.N. (113 Stat.) 1501, 1501A-214. Less than a year later, on October 11, 2000, Congress provided for another transfer of funds, this time "in such amounts as estimated by the trustees of such [Combined] Fund to offset the amount of any deficit in net assets in the Combined Fund through August 31, 2001." Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, § 701(a), 2000 U.S.C.C.A.N. (114 Stat.) 922, 1024-25.

12/In a further effort to deny the Combined Fund's legitimate reliance on the district court judgment, Blue Diamond observes that the Coal Act contains a provision under which the Combined Fund must credit or repay premiums to an operator that has received an assignment of a Combined Fund beneficiary in error. Pet. 12. The court of appeals swiftly and correctly disposed of this argument: "Clearly, [Section 9706(f)(3)(A)(i) of the Coal Act] deals with a review of the particular facts concerning a particular retiree, and does not contemplate the general applicability or constitutionality" of any portion of the statute. Pet. App. 14a-15a. The statute itself confirms this point. It provides for administrative review of the correctness of individual assignments. Claims that part or all of the Coal Act is unconstitutional could not be sustained by the Secretary or the Commissioner in any event.

Blue Diamond also claims that the Combined Fund could not have relied on its final judgment because other lawsuits remained alive and the Combined Fund had no real "closure" on this issue. Pet. 9. In other words, Blue Diamond takes the remarkable position that, as long as the government, the Combined Fund, or any other specific defendant or group of defendants is litigating in any court with any plaintiff as to the validity or interpretation of a statute or regulation, none of the final judgments entered can be anything other than tentative, unless and until this Court grants review in at least one such case and issues a decision. This position cannot be reconciled with the well-established principles regarding the finality of judgments discussed above.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN R. MOONEY
ELIZABETH A. SAINDON
MOONEY, GREEN, BAKER, and SAINDON, P.C.
1920 L Street, NW, Suite 400
Washington, DC 20036
(202) 783-0010

PETER BUSCEMI
Counsel of Record
MORGAN, LEWIS & BOCKIUS LLP
1800 M Street, NW
Washington, D.C. 20036
(202) 467-7000

DAVID W. ALLEN
Office of the General Counsel
UMWA HEALTH & RETIREMENT FUNDS
2121 K Street, NW
Washington, D.C. 20037
(202) 521-2220

October 1, 2001

APPENDIX

IN THE UNTIED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LINDSEY COAL MINING COMPANY LIQUIDATING TRUST by its Liquidating Trustees H. Robert Lasday and Elaine K. Light Plaintiffs,	)	
-vs-	)	Civil Action No. 94-143
KENNETH S. APFEL, Commissioner of Social Security, et al., Defendants.	)	
AMBROSE, District Judge.	)	

MEMORANDUM OPINION
and
ORDER OF COURT

This declaratory judgment action was brought by Plaintiff in 1994, seeking judicial review of a final action of the Commissioner of Social Security, made in 1993, assigning Plaintiff liability for twenty-three (23) of its former miners (or their dependents or beneficiaries) pursuant to the Coal Act, 26 U.S.C.A. § 9701-9722. Under the assignment Plaintiff was required to make payments to a multi-employer benefit fund established as a result of negotiations and agreements entered into between members of the Central Pennsylvania Coal Producers Association and the union representing Plaintiff's miners.

Plaintiff disputed these obligations under the Coal Act in this lawsuit, arguing that it was not subject to the provisions of the Coal Act and that even if it was subject to the Act, the Act was unconstitutional.

I rejected Plaintiff's arguments and granted summary judgment in favor of Defendants. The Court of Appeals affirmed. Plaintiff did not file an appeal of that decision.

Thereafter, the Supreme Court of the United States in Eastern Enterprises v. Apfel, 524 U.S. 498, 118 S.Ct. 2131 (1998) held that the Coal Act, as applied to a party similarly situated as Plaintiff, was unconstitutional.

One year after the Supreme Court's decision, Plaintiff has filed a Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) (Docket No. 52). Federal Rule of Civil Procedure 60(b)(6) provides: "On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons...(6) any other reason justifying relief from the operation of the judgment." Plaintiff also requests an indefinite stay of any action on its Motion for Relief pending development of similar motions by other similarly situated Plaintiffs requesting relief from judgment in other "Coal Act" cases. Specifically, Plaintiff avers that a United States District Court has granted a motion to vacate its original judgment in a similar case under Rule 60(b)(6) in Blue Diamond Coal Co. v. Shalala, No.3:93-cv-473 (E.D.Tenn., November 4, 1998), and an interlocutory appeal of that order is pending. Additionally, Plaintiff alleges that motions to vacate judgments have been filed in similar circumstances in Templeton Coal Co. and Davon, Inc., No. TR 93-198-c-T/H (S.D. Ind.).

This is not the first time this issue has come before this

Court. In Coltec Industries, Inc. v. Hobgood ("Coltec"), 184 F.R.D. 60, 61 (W.D. Pa. Jan. 29, 1999), Judge Smith denied a motion to vacate under Rule 60(b)(6) in another Coal Act case. The facts in Coltec were different from those present here in that the Plaintiff in Coltec voluntarily dismissed its constitutional claims in exchange for Defendant's agreement to allow Plaintiff to amend its complaint to state a claim challenging how their Coal Act contributions were calculated. Thus, Plaintiff made a deal to give up constitutional claims for the right to pursue miscalculation claims.

In discussing the Coltec Plaintiff's Motion brought under Rule 60(b)(6),[1] Judge Smith refused to grant the Motion. Noting that relief under Rule 60(b)(6) is extraordinary and may be granted only on a showing of exceptional circumstances (In re Fine Paper Antitrust Litig., 840 F.2d 188, 194 (3d Cir. 1998)), Judge Smith held that "(a) change in the decisional law after judgment is entered, however, is not considered exceptional and does not justify relief" (citations omitted).

That the facts and procedural history herein differ from those in Coltec is of no import to the outcome. In the interest of consistency and because I find the reasoning of Judge Smith to be persuasive, I find that Plaintiff's Motion for Relief from Judgment and Request for a Stay should be denied as Plaintiff has not presented the extraordinary and exceptional type of facts justifying relief under Federal Rule of Civil Procedure 60(b)(6).

DATE FILED: August 4, 1999

---

[1]The Plaintiff in Coltec also requested relief under Rule 60(b)(5). That request was also denied.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

TEMPLETON COAL COMPANY, INC., SHERWOOD-TEMPLETON COAL COMPANY, INC., and PRINCETON MINING COMPANY, Plaintiffs,	)
vs.	)TH 93-158-C-T/H
KENNETH S. APFEL, Commissioner, Social Security Administration, and UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, Defendants.	)

ENTRY DENYING PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT

This matter comes before the court on the Motion for Relief from Judgment filed by Plaintiffs, Templeton Coal Company, Inc., Sherwood-Templeton Coal Company, Inc., and Princeton Mining Company, pursuant to Federal Rule of Civil Procedure 60(b)(6).[1] Plaintiffs filed this suit on

---

[1]A Rule 60(b)(6) motion has been filed in another case in this court, Davon Inc. v. Apfel, No. TH 93-198-C-T/H. The Rule 60(b)(6) motions in these two cases were filed

September 2, 1993,[2] seeking a declaratory judgment that the "super-reach back" provisions of the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. §§ 9701 *et seq.*, were unconstitutional as applied to them. The Coal Act created Defendant United Mine Workers of America Combined Benefit Fund ("Combined Fund") and provided that Defendant Kenneth S. Apfel, Commissioner of the Social Security Administration ("SSA"), would assign a portion of the Combined Fund beneficiaries to a group of former coal mining companies that last had collective bargaining relationships with the United Mine Workers prior to 1974. Plaintiffs are such companies, known as "super-reach back companies," and were assigned Combined Fund beneficiaries.

On April 4, 1995, this court granted Defendants' motions for summary judgment, deciding that the challenged provisions of the Coal Act, as applied to Plaintiffs, did not violate the takings or due process clauses of the Fifth Amendment. *See Templeton Coal Co., Inc. v. Shalala,* 882 F. Supp. 799 (S.D. Ind. 1995). The Seventh Circuit affirmed, and the Supreme Court denied Plaintiffs' petitions for certiorari. *See Davon, Inc. v. Shalala,* 75 F.3d 1114 (7th Cir.), *cent. denied,* 519 U.S. 808 (1996). In 1998, the Supreme Court decided *Eastern Enterprises v. Apfel,* 524 U.S. 498 (1998), holding that the "super-reach back"

---

jointly and the discussion in this Entry is equally applicable to the motion filed in Davon. Inc. However, the formal ruling on Davon's motion will be issued in a separate Entry under the Davon. Inc. caption.

[2]Davon filed its suit November 3, 1993.

provisions of the Coal Act were unconstitutional as applied to the plaintiff in that case. Four justices found the provisions to be an unconstitutional taking, one justice found them to violate the due process clause, and four justices dissented.[3]

Between November 1993 and July 1998, Plaintiffs paid premiums to the Combined Fund in the following amounts: Templeton Coal Co.--$594,518; Sherwood--Templeton Coal Co.--$34,453; Princeton Mining Co.--$1,165,333.[4] After the *Eastern Enterprises* decision, the SSA sent letters to the Plaintiffs, and other "super-reach back companies," stating that "[p]ursuant to the ... *Eastern Enterprises* [decision], the assignments to [the "super-reach back companies"] under the provisions of the [Coal Act] are void." (Patton Aff., Ex. D; Wulf Aff., Ex. C; Smith Aff., Ex. C; Mot. of Pls.' for Relief from J., Ex. 4 at 5.) This action effectively relieved all "super-reach back companies," including the Plaintiffs, of any future obligations to make payments under the Coal Act.

The Combined Fund then began refunding premiums previously paid by some of the "super-reach back companies"; the refunds were retroactive and in full, covering all premiums paid. However, the "super-reach back companies" who had

---

[3]Background facts surrounding the Coal Act and the challenges to its constitutionality by "super-reach back companies" are fully set forth in the opinions by the Supreme Court in *Eastern Enterprises*, the Seventh Circuit in *Davon, Inc.*, and this court in *Templeton Coal Co.*

[4]Davon, Inc. paid $1,048,174.

binding judgments entered against them (such as the Plaintiffs), have not received any refunds.[5]

Armed with the decision in *Eastern Enterprises*, the Plaintiffs return to this court seeking relief, pursuant to Rule 60(b)(6), from the April 4, 1995 judgment. Presumably Plaintiffs' goal is to re-open this case in order to demand a refund of the premiums they paid to the Combined Fund before the *Eastern Enterprises* decision.

Rule 60(b) of the *Federal Rules of Civil Procedure* authorizes relief from a court's judgment or order based upon a variety of grounds, including mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud or misconduct by the opposing party, lack of jurisdiction of the issuing court, or prior satisfaction or release of the judgment. Rule 60(b)(6) adds a residual category authorizing relief for "any other reason justifying relief from the operation of the judgment."

"Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances." *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.*, 131 F.3d 625, 628 (7th Cir. 1997) (citing *Dickerson v. Board of Educ. of Ford Heights, Ill.*, 32 F.3d. 1114, 1116 (7th Cir. 1994)). An "overarching concern" of Rule 60(b) is "the need for the finality of judgments." *Id.* "Rule 60(b) sets a 'higher value on

---

[5]Except as noted, the Defendants have not disputed these factual assertions; accordingly, the court accepts them as true in deciding Plaintiffs' Motion. *See Klapprott v. United States*, 335 U.S. 601, 603-04 (1949) (accepting as true undenied factual allegations in a Rule 60(b)(6) motion).

the social interest in the finality of litigation.'" *Id.* (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682 (7th Cir. 1983)).

Rule 60(b)(6) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 615 (1949) (allowing a naturalized citizen to set aside a default judgment of denaturalization, upon a showing that he had been sick, indigent, and imprisoned at the time the judgment had been entered). "In a rule already limited in application to extraordinary circumstances, proper resort to this 'catch all' provision is even more highly circumscribed." *Provident Sav. Bank v. Popovich*, 71 F.3d 696, 700 (7th Cir. 1995) (citing *Pantoja v. Texas Gas & Transmission Corp.*, 890 F.2d 955, 960 (7th Cir. 1989) (Rule 60(b)(6) is to be applied only in "the most extraordinary of circumstances.")).

"[A] change in the applicable law after entry of judgment does not, by itself, justify relief under 60(b)." *McKnight v. United States Steel Corp.*, 726 F.2d 333, 336 (7th Cir. 1984) (citing *DeFilippis v. United States*, 567 F.2d 341, 343 n.5 (7th Cir. 1977) ("[C]ourts are generally agreed that a change in the law after entry of judgment does not alone justify relief under (b)(6).")); *see also Agostini v. Felton*, 521 U.S. 203, 239 (1997) ("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)."); RESTATEMENT (SECOND) OF JUDGMENTS § 73 cmt. c (1982) (It is a very unsound policy" to apply Rule 60(b) "where a subsequent judicial decision changes the law that was applied in reaching an earlier judgment."). This rule applies even if the changed precedent is from the Supreme

Baldinger, 38 F.3d 1266, 1273 (2d Cir. 1994) ("This principle [that a change in decisional law does not itself warrant Rule 60(b)(6) relief] ... applies in federal cases where the Supreme Court has changed the applicable rule of law.") (citing *Picco* v. *Global Marine Drilling Co.*, 900 F.2d 846, 851 (5th Cir. 1990) (holding that the district court abused its discretion in granting Rule 60(b)(6) relief based upon a Supreme Court decision that changed the law)); *Bailey v. Ryan Stevedoring Co., Inc.*, 894 F.2d 157, 160 (5th Cir. 1990) (citing *McKnight* and *Title v. United States*, 263 F.2d 28, 31 (9th Cir. 1959)); *Travelers Indem. Co. v. Sarkisian*, 794 F.2d 754, 757 (2d Cir.), *cert. denied*, 479 U.S. 885 (1986).

Further, this rule applies when the underlying judgment involves a constitutional claim.[6] *See Batts v.*

---

[6]Plaintiffs assert that "[t]he policy favoring the finality of judgments is not strong when developing federal constitutional rights are involved." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 13.) However, the cases cited by Plaintiffs are inapposite because they all involve *prospective* application of past judgments. *See Whitcomb v. Davis*, 403 U.S. 124 (1971); *Parnell v. Rapides Parish Sch. Bd.*, 563 F.2d 180, 185 (5th Cir. 1977); 18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE §131.24[4] (3d ed. 1998) ("Some cases involving continued or threatened violation of constitutional rights have recognized an exception to the general rule that a change in the law will not avoid claim preclusion."). In this case, it is undisputed that this court's judgment will have no prospective effect; in other words, regardless of the result of this Rule (60)(b)(6) motion, Plaintiffs will have no future obligation to make payments

Tow-Motor Forklift Co., 66 F.3d 743, 749 (5th Cir. 1995) ("Changes in decisional law based on constitutional principles are not of themselves extraordinary circumstances sufficient to justify Rule 60(b)(6) relief.") (citing *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir. 1958)). In *Collins*, a plaintiff challenged the constitutionality of a Kansas statute relating to the notice landowners received in condemnation actions. The plaintiff lost at trial and on appeal and the U.S. Supreme Court denied his petition for certiorari. Over a year later, in a different case, the Supreme Court held that the notice provisions of the same Kansas statute were unconstitutional. The plaintiff in the first action sought relief from the adverse judgment in light of the new Supreme Court case. The Tenth Circuit affirmed the district court's denial of the motion, explaining that "[l]itigation must end some time, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry, does not justify setting it aside." *Collins*, 254 F.2d at 839.

Notwithstanding this caselaw, Plaintiffs move for relief from judgment in light of *Eastern Enterprises*. In support of their Rule 60(b)(6) motion, Plaintiffs present three main arguments: (1) the basis of the *Eastern Enterprises* decision, notions of fairness and justice, fulfills the standard for granting Rule 60(b)(6) relief; (2) after the *Eastern Enterprises* decision, the SSA "voided" the assignment of beneficiaries to Plaintiffs, meaning that the assignments should be treated as having never occurred; and, (3) the equities weigh heavily in favor of granting Rule 60(b)(6) relief.

---

under the Coal Act.

1. Basis of the *Eastern Enterprises* Decision

Plaintiffs first argue that the *Eastern Enterprises* decision should not be treated as "merely a subsequent judicial decision changing the law," because the decision was based upon "fundamental notions of justice" and "substantial questions of fairness." (Reply Br. of Pls. in Supp. of Mot. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) ("Reply Br. of Pls.") at 6 (quotations omitted).)

However, Plaintiffs fail to cite to any case holding, or even intimating, that a subsequent change in the law will alone warrant Rule 60(b)(6) relief if the subsequent change was made on the grounds of "notions of justice" and/or "questions of fairness."[7] This court is hesitant to adopt such an exception to the general rule (that a subsequent change in the law will not alone warrant Rule 60(b)(6) relief) because such an exception would threaten to eviscerate the rule.

In many (if not most) cases, a losing litigant could fashion an argument that the subsequent change in the law is based upon general notions of fairness. For example, in *Tomlin v. McDaniel,* 865 F.2d 209 (9th Cir. 1989), the plaintiffs 42 U.S.C. § 1983 action was dismissed by the district court as time barred because the court held that a

---

[7]These quotations come from the plurality's opinion in *Eastern Enterprises. See* 118 S.Ct. at 2151, 2152. Justice Kennedy's concurrence (which was necessary to form a majority) is not so strongly worded. However, the court assumes for the sake of argument that the Supreme Court's holding in *Eastern Enterprises* is based upon "notions of justice" and "questions of fairness."

one-year statute of limitations applied to such actions. The plaintiff lost on appeal and the Supreme Court denied his petition for certiorari. Subsequently, the Supreme Court held that the relevant state's statute of limitations applicable to personal injury actions was also applicable to section 1983 actions. *See Wilson v. Garcia, 471 U.S.* 261, 276 (1985). Because the plaintiffs section 1983 action had been filed within twenty-one months of its accrual, and the relevant state's statute of limitations for personal injury actions was two years, under *Wilson,* the plaintiffs suit would not have been dismissed as being untimely. The Ninth Circuit affirmed the district court's denial of Rule 60(b)(6) relief. *See Tomlin,* 865 F.2d at 211. As is the case with the *Eastern Enterprises* decision, the Supreme Court's *Wilson* decision could readily be said to be based upon general notions of justice. For instance, the Court said the following:

> The rights enforceable under § 1983 include those guaranteed by the Federal Government in the Fourteenth Amendment: that every person within the United States is entitled to equal protection of the laws and to those "fundamental principles of liberty and justice" that are contained in the Bill of Rights and "lie at the base of all our civil and political institutions." These guarantees of liberty are among the rights possessed by every individual in a civilized society, and not privileges extended to the people by the legislature.
>
> * * *
>
> The characterization of all § 1983 actions as involving claims for personal injuries minimizes the risk that the

> choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983.

Wilson, 471 U.S. at 278-79 (citations omitted).

And in *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir. 1958), see recitation of *Collins'* facts above, the basis of the subsequent Supreme Court decision, which invalidated the same statute unsuccessfully challenged by the plaintiff in *Collins*, was the due process clause. *See Walker v. Hutchinson City*, 352 U.S. 112 (1956) (holding that the notice provisions of the statute at issue did not measure up to the requirements of the due process clause of the Fourteenth Amendment). A "fairness" argument could easily be fashioned from a case finding a statute violative of the due process clause. However, in *Collins*, as in *Tomlin*, the court of appeals affirmed the district court's denial of Rule 60(b)(6) relief.

It should be noted that neither *Collins* nor *Tomlin* discuss the issue of whether the basis of the subsequent change in the law can (or should) provide a sufficient basis for granting Rule 60(b)(6) relief. But the point is that when the law is changed, many (if not most) times that change can be chalked up to notions of fairness or justice. If this were a reason for reopening all final judgments made under the prior law, then there would not be much left of the general rule that a subsequent change in the law will not alone justify Rule 60(b)(6) relief.

2. "Voided" Assignments

Plaintiffs next argue that Rule 60(b)(6) relief is warranted because after the *Eastern Enterprises* decision, the SSA "voided" the assignment of beneficiaries to Plaintiffs. As indicated above, after the *Eastern Enterprises* decision, the SSA sent letters to the Plaintiffs, and other "super-reach back companies," stating that "[p]ursuant to the ... *Eastern Enterprises* [decision], the assignments to [the "super-reach back companies"] under the provisions of the [Coal Act] are void." (Patton Aff., Ex. D; Wulf Aff., Ex. C; Smith Aff., Ex. C; Mot. of Pls.' for Relief from J., Ex. 4 at 5.) It is clear that this action effectively relieved all "super-reach back companies," including the Plaintiffs, of any *future* obligations to make payments under the Coal Act. However, Plaintiffs also contend that by using the word "void" in the letter, the SSA *retroactively* undid the assignments, and therefore the assignments should be viewed as having never occurred. "And if an act did not legally occur, it is metaphysically--and equitably-impossible for the consequences of such an act to remain in force." (Reply Br. of Pls. at 7.) Therefore, Plaintiffs argue, this is an exceptional circumstance warranting Rule 60(b)(6) relief.

Since the SSA opposes Plaintiffs' Motion for Relief from Judgment, it seems reasonable to conclude that when the SSA used the word "void," the SSA did not *intend* for it to provide an avenue for opening the judgment. (Def. Apfel's Mem. of Law in Opp'n to Pls.' Mot. for Relief from J. at 6 (indicating that in 'voiding' the assignments, the SSA took "action that effectively relieved] plaintiffs of further obligations to make payments under the [Coal Act]").) Further, Plaintiffs provide no case holding, or even intimating, that a statement made by an opposing party--after judgment

becomes final and after the subsequent change in the law--can constitute an exceptional circumstance warranting Rule 60(b)(6) relief. Even if the SSA intended to retroactively cancel the assignments, and even if the SSA supported this Rule 60(b)(6) motion and strongly believed that the Combined Fund should refund all the money the Plaintiffs paid, it is difficult to see how this really matters. Under the Coal Act's statutory scheme, the SSA assigns the beneficiaries and the Combined Fund collects and distributes the money--no party has argued that the SSA has any authority to refund premiums. Moreover, it would be an unconstitutional violation of the separation of powers doctrine if the SSA attempted to require a court to open a final judgment. See *Holland v. Virginia* Lee Co., 188 F.R.D. 241, 256 (W.D. Va. 1999) (rejecting a similar argument); *cf. Plaut v. Spendthrift Farm,* 514 U.S. 211 (1995) (holding that a federal statute which required courts to open certain judgments violated constitutional separation of powers principles).

3. Equities

Finally, Plaintiffs argue that the equities weigh heavily in favor of granting their Rule 60(b)(6) motion.

First, Plaintiffs contend that the Combined Fund's only claim of right to the premiums paid by Plaintiffs is this court's judgment, which, in light of *Eastern Enterprises,* is not correct. Therefore, Plaintiffs argue, "denying this motion would ... affirm an unconstitutional act [and] allow the Fund to retain over $2.8 million of Plaintiffs' money to which the Fund has no legitimate claim." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 11-12.) The problem with this argument is that it (or some

variation of it) could be made any time there is a subsequent change in the law.

Next, Plaintiffs argue that they "are being punished for trying to vindicate constitutional rights that were ultimately validated by the Supreme Court in *Eastern Enterprises*." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 10.) Indeed, Plaintiffs reason that had they and other companies not first challenged the constitutionality of the "super reachback" provisions of the Coal Act, the Supreme Court would not have granted certiorari in *Eastern Enterprises*, and therefore, "[w]ithout litigation such as plaintiffs', there would not be today a Supreme Court ruling to clarify this constitutional issue." (*Id.* at 11 n. 6.)

Plaintiffs may be correct that their litigation was in part responsible for the Supreme Court's granting of certiorari in *Eastern Enterprises*, although given the discretionary nature of the Supreme Court's certiorari powers in such cases, this would be a highly speculative basis for granting Rule 60(b)(6) relief. Further such an argument must be tempered by the need for finality in litigation. In *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991), Justice Souter, announcing the judgment of the Court, addressed the issue of "litigants ... freeload[ing] on those without whose labor the new rule would never have come into being." *Id.* at 541 (Souter, J., announcing the judgment of the Court, joined by Stevens, J.). Justice Souter answered the question, "[W]hy should someone whose failure has otherwise become final not enjoy the next day's new rule, from which victory would otherwise spring?" with the following discussion:

> Insofar as equality drives us, it might be argued that the new rule should be applied to those who had toiled and failed, but whose claims are now precluded by res judicata; and that it should not be applied to those who only exploit others' efforts by litigating in the new rule's wake. . . . .
>
> While those whose claims have been adjudicated may seek equality, a second chance for them could only be purchased at the expense of another principle. Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of that contest, and that matters once tried shall be considered forever settled as between the parties. Finality must thus delimit equality in a temporal sense, and we must accept as a fact that the argument for uniformity loses force over time.

Id. at 542 (quotation and citations omitted).

Next, Plaintiffs argue that they "are being penalized for obeying the law while others are rewarded for disobeying it." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 11.) They reach this conclusion because "super-reachback companies" who did not pay the premiums and did not bother to sue will now never be required to pay. In contrast, Plaintiffs paid the premiums and dutifully pursued their rights through the legal system.

Defendants respond to this argument by citing *Cincinnati Insurance Co. v. Flanders Electric Motor Service, Inc.*, 131 F.3d 625 (7th Cir. 1997). In that case, Cincinnati Insurance, an insurer, brought a declaratory judgment action

in federal court against Flanders, its insured, seeking a declaration that the pollution exclusion in the insurance policy at issue precluded coverage for the cleanup of a contaminated site. The district court decided in favor of Cincinnati Insurance on the as-yet-undecided Indiana state law issue, and the Seventh Circuit affirmed. A year and a half later, the Indiana Supreme Court considered the same issue in two different cases, and decided that the pollution exclusion clause did not preclude coverage. The district court denied Flanders' motion for relief from judgment pursuant to Rule 60(b)(6) and Flanders appealed. The Seventh Circuit considered Flanders' argument that, in light of the new Indiana Supreme Court cases, other insured parties were receiving insurance coverage for pollution *at the same site,* while Flanders was not. Therefore, Flanders argued, "it [wa]s being inequitably treated vis-a-vis some other 'potentially responsible parties.'" *Id.* at 629. The Seventh Circuit affirmed the denial of Rule 60(b)(6) relief, noting that "[a]ny change in the law may leave one or more parties of earlier litigation with the feeling that they have been treated unfairly, but this must be balanced with the need for finality of litigation." *Id.* at 630.

The "fairness" argument advanced by Flanders appears to have been virtually the same as that now advanced by Plaintiffs--just as the only thing that distinguished Flanders from the other "potentially responsible parties" was the fact that a final judgment had been issued against him before the controlling Indiana Supreme Court decision, so the only thing that distinguishes Plaintiffs from the other "super-reach back companies" is the fact that a final judgment had been issued against them before the *Eastern Enterprises* decision.

The court notes, however, the holding of *Cincinnati Insurance* was that the district court did not abuse its

discretion in denying Flanders' Rule 60(b)(6) motion; the Seventh Circuit espoused no opinion on the issue of whether it was within the range of the district court's discretion to *grant* the motion. But it is clear from *Cincinnati Insurance* that "the need for finality" is worth substantial weight when balanced against such a fairness argument.

Plaintiffs seem to dispute that there is a need for finality in this case; they argue that "[t]here are no compelling issues of finality here." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 12.) They argue that "only a few other companies are situated in Plaintiffs' exceptional circumstances, so the Court need not fear the opening of litigation floodgates by granting relief here."[8] (Reply Br. of Pls. at 8-9.)

When *Cincinnati Insurance* and other Rule 60(b)(6) cases speak of balancing the movant's arguments with the need for finality, these cases speak of "finality" in a larger sense than Plaintiffs do. For instance, there is no indication that in *Cincinnati Insurance*, either the district court or the Seventh Circuit was concerned about a rush of Rule 60(b)(6) motions from other insureds who had litigated and lost on the identical pollution-exclusion issue. Instead, such cases are concerned with the "'social value in the finality of litigation.'" *See Cincinnati Ins.*, 131 F.3d at 628 (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682 (7th Cir. 1983)).

---

[8]It is worth noting that in one sense, this court need never concern itself with one of its decisions 'opening the litigation floodgates' since a district court's decision does not have precedential authority. *See Howard v. Wal-Mart Stores, Inc.*, 160 F.3d 358, 359 (7th Cir. 1998).

The cases make clear that the principle of finality extends well beyond cases construing the Coal Act and looms as a heavy counter-balance to any policy arguments a Rule 60(b)(6) movant may make.

In *United States v. Keane*, 852 F.2d 199 (7th Cir. 1988), *cert. denied*, 490 U.S. 1084 (1989), the court discussed the social value of finality in litigation in the context of a criminal case:

> Everyone is entitled to a full and fair opportunity for litigation, and no one is entitled to multiple opportunities. The decision the second time around is not necessarily more accurate than the first and comes at great cost to legitimate interests in finality--not only the interests of the prevailing party but also the interests of the judicial system. Rules of preclusion induce parties to concentrate their energies and resources on getting things right the first time. The prospect of relitigating would reduce the effective stakes of the first case, leading to an erosion in accuracy. From a systemic perspective, time consumed relitigating one case subtracts from the time available to litigate others. Litigants must wait in a longer queue, receive less judicial attention, or both. It would not be possible to stop with two decisions; if hindsight shows the error of the first decision, it may show error of the second in turn. The high costs of multiple decisions in the same case have led the Supreme Court to conclude that a party does not get a second chance even if an intervening decision of that Court makes pellucid the error of the original decision. *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394 (1981). Given *Moitie*, there can

> be no doubt that if in a civil case Keane had been found liable for fraud and assessed $27,000 as damages, a later decision of the Supreme Court rejecting the reasoning used in his case would not have entitled him to a fresh adjudication.

Id. at 201-02 (citation omitted) (holding that the writ of error coram nobis is unavailable unless "the prisoner is [still] suffering civil disabilities unique to criminal convictions," and a fine and/or the reputational injury from having a conviction on the prisoner's record does not suffice).

And in *Norgaard v. DePuy Orthopaedics, Inc.*, 121 F.3d 1074 (7th Cir. 1997), the court elaborated:

> In *United States v. Keane*, . . . we held that a reinterpretation of existing law did not justify reopening the monetary aspects of criminal judgments (that is, fines). Only ongoing custody or future collateral consequences support post-judgment relief, we held. Collateral review has always been allowed more freely in criminal than in civil cases. If financial aspects of criminal judgments do not change when understanding of the law changes, it is hard to see why financial aspects of civil judgments should change. Even when imprisonment is at issue, most changes of law do not affect judgments that became final before the change occurred. It would be topsy-turvy, both historically and prudentially, to permit a change of law to upset a civil money judgment more readily than a criminal judgment, which affects liberty. Rule 60(b)(5) permits the revision of an ongoing decree, such as an injunction, when a prior judgment upon which it is based has been reversed or otherwise

> vacated, or it is no longer equitable that the judgment should have prospective application", which strongly implies that a money judgment (or a no-money judgment) is not to be upset just because the law on which it was founded has changed.

Norgaard, 121 F.3d at 1077 (citations omitted).

The landscape of *Cincinnati Insurance*, *Keane* and *Norgaard* shows the importance of finality in the law, especially when the only justification for reopening a final judgment is the recovery of money paid as a result of the judgment.[9] Plaintiffs offer nothing to rebut this caselaw. However, Plaintiffs do present three additional arguments in support of their overall argument that the "equities" support the granting of Rule 60(b)(6) relief in this case.

---

[9]Plaintiffs argue at one point that there are "no issues of finality here" because the judgment in this case "was for declaratory relief and contains no money judgment." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 12.) However, it is abundantly clear from Plaintiffs' briefs that the only reason they seek Rule 60(b)(6) relief is to pave the way for the recovery of the premiums they paid to the Combined Fund. If Plaintiffs were seeking Rule 60(b)(6) relief for the sole reason of obtaining the moral satisfaction that they had been correct in their litigation position, then their Rule 60(b)(6) motion could be rejected in far less space than is consumed by this Entry. *Cf. Keane*, 852 F.2d at 204 (holding that a defendant may not reopen a criminal case simply to eliminate a criminal conviction from his record and "bask in the satisfaction of having his position vindicated")

Plaintiffs argue that Rule 60(b)(6) relief is justified because they paid such a large amount of money to the Combined Fund before the *Eastern Enterprises* decision (collectively, just over $2.8 million). However, this hardly appears to be a principled method of determining Rule 60(b)(6) motions. What would be the threshold amount in any given Rule 60(b)(6) motion? For example, Princeton Mining Co. paid $1,165,333. Is the threshold $1,000,000? But Templeton Coal Co. paid $594,518; so is the threshold $500,000? But Sherwood-Templeton Coal Co. paid $34,453. In order for Plaintiffs' argument to include all of the Plaintiffs (and there is no indication that Plaintiffs intend anything different), the threshold must be "only" $34,453. And if the amount of money is to be a determining factor, then perhaps the court should consider the amount of money in relation to the party's net worth. In which case, perhaps an unsuccessful social security claimant is more worthy of past benefits after a subsequent change in the caselaw than any of the Plaintiffs here.

Plaintiffs next argue that relief is warranted because Congress has provided a method for the Combined Fund to obtain reimbursement of refunds the Combined Fund pays due to the *Eastern Enterprises* decision. However, this argument is similarly unpersuasive. First of all, as a factual matter, it appears that the Combined Fund is not entitled to reimbursement for any refunds of premiums paid before September 30, 1995 (the Coal Act became effective in 1993).[10] And even as to the refunds that would be

---

[10]The Combined Fund makes this factual argument in its brief, *see* Mem. of Def. Trustees of the UMWA Combined Benefit Fund in Opp'n to Pls.' Mot. for Relief from J. at 27

reimbursed, simply because the reimbursement would come from a governmental entity does not mean that there is a lowered interest in finality or that the money somehow is less important than if it were to be paid from some other source. And finally, Plaintiffs have failed to demonstrate how the fact that the Combined Fund may obtain reimbursement for some refunded money is relevant to a Rule 60(b)(6) motion. *See Holland v. Virginia Lee Co.*, 188 F.R.D. 241, 256 (W.D. Va. 1999) (rejecting a similar argument: "[A]n effort to isolate alternative sources of revenue which would compensate for the payment of a refund does not help Virginia Lee's case here. The current fitness of the funding mechanism established by the statutory construct is simply not relevant.").

Finally, Plaintiffs' Rule 60(b)(6) motion is not the only such motion to be filed in the wake of *Eastern Enterprises.* Three courts have denied Rule 60(b)(6) relief to "super-reachback companies" who unsuccessfully challenged the constitutionality of the Coal Act and whose judgments became final before the Supreme Court's *Eastern Enterprises* decision, *see Lindsey Coal Mining Co. Liquidating Trust v. Apfel,* No. 94143 (W.D. Pa. August 4,1999); *Holland v. Virginia Lee Co.*, 188 F.R.D. 241 (W.D. Va. 1999); *Coltec Indus., Inc. v. Hobgood,* 184 F.R.D. 60 (W.D. Pa. 1999), while one court has granted Rule 60(b)(6) relief, *see Blue Diamond Coal Co. v. Shalala,* No. 3:93-CV473 (E.D. Tenn. November 4, 1998). Plaintiffs distinguish the cases denying Rule 60(b)(6) relief on the grounds that either the coal company did not petition the Supreme Court for certiorari

---

(citing 30 U.S.C. Section 1232(h)), and Plaintiffs did not dispute it in their Reply brief.

(Lindsey Coal Mining Co.), or settled its claim before exhausting its appeals *(Virginia Lee Co., Coltec Industries)*.

By contrast, Plaintiffs argue that *Blue Diamond Coal*, wherein the court granted Rule 60(b)(6) relief, is the only truly analogous case to this one. Even if that were true, a decision from a fellow district court is only as persuasive as the reasoning it employs. *See, e.g., Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 532 (7th Cir. 1988). The court in *Blue Diamond Coal* relied upon four cases in granting the "super-reach back" company's Rule 60(b)(6) motion: *Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25 (1965); *Pierce v. Cook & Co., Inc.*, 518 F.2d 720 (10th Cir. 1975); *First American National Bank of Nashville v. Bonded Elevator, Inc.*, 111 F.R.D. 74 (W.D. Ky. 1986); and *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743 (5th Cir. 1995).

The first two cases *(Gondeck* and *Pierce)* deal with "common disaster" situations in which different legal standards were applied to victims of the same automobile accident. In *McGeshick v. Choucair*, 72 F.3d 62 (7th Cir. 1995), the Seventh Circuit discussed *Gondeck*, and indicated that the "most probable" reading of the case is that it should be limited to "common disaster" situations:

> In determining the appropriate balance between these countervailing factors of correcting a judicial course of action that has proven to have been improvidently chosen and of preserving finality in judicial decision-making, courts have been guided by a variety of considerations. The Supreme Court has confronted the issue on two occasions. In *Gondeck v. Pan American World Airways*, 382 U.S. 25 ... (1965), the Court vacated its order denying certiorari and

> reversed the judgment under review when the plaintiff demonstrated that the Court of Appeals had erred in its interpretation of the applicable standard and that another Court of Appeals subsequently had applied the standard correctly in another case arising out of the same disaster. By contrast, in *Weed v. Bilbrey,* 400 U.S. 982 ... (1970), the Supreme Court declined to reopen an earlier disposition. After certiorari had been denied in *Weed,* the writ was granted in another case and the Court altered the law in a way that also would have benefitted the petitioner in *Weed.* Although the Court's action might possibly be explained by the unique nature of its discretionary certiorari review, it seems more probable that the Court decided to limit its abrogation of the finality doctrine to situations involving a common disaster.

Id. at 63-64. The court in *Blue Diamond Coal* does not mention *Weed,* although the "super-reach back" companies' situation appears to be much more analogous to the facts surrounding *Weed* than to the facts surrounding *Gondeck. Compare Weed,* 400 U.S. at 982-83 (Douglas, J., dissenting from denial of motion for leave to file petition for rehearing), *with Gondeck,* 382 U.S. at 26-28. Given the Seventh Circuit's discussion in *McGeshick,* and the fact that *Weed* seems to be more analogous to this case than *Gondeck,* this court declines to extend the reasoning of *Gondeck* to the instant case, which does not involve a "common disaster" situation.

The court in *Blue Diamond Coal* also relied upon *Pierce,* which is another "common disaster" case. In *Pierce,* the Tenth Circuit relied upon *Gondeck* in reaching its holding that Rule 60(b)(6) relief was justified. The court distinguished its prior decision in *Collins* (discussed above) in the following

manner: "*Collins* differs from the instant case in that there the decisional change came in an unrelated case. Here it came in a case arising out of the same accident as that in which the plaintiffs now before us were injured." *Pierce*, 518 F.3d at 723. As discussed above, *Collins* involved two separate constitutional challenges to the same provisions of the same statute. In this way, *Collins* is far more analogous to the present case than is the "common disaster" situation in *Pierce*.

The court in *Blue Diamond Coal* also relied upon *Pierce*, which is another "common disaster" case. In *Pierce*, the Tenth Circuit relied upon *Gondeck* in reaching its holding that Rule 60(b)(6) relief was justified. The court distinguished its prior decision in *Collins* (discussed above) in the following manner: "*Collins* differs from the instant case in that there the decisional change came in an unrelated case. Here it came in a case arising out of the same accident as that in which the plaintiffs now before us were injured." *Pierce*, 518 F.3d at 723. As discussed above, *Collins* involved two separate constitutional challenges to the same provisions of the same statute. In this way, *Collins* is far more analogous to the present case than is the "common disaster" situation in *Pierce*.

Furthermore, the Seventh Circuit has been somewhat critical of *Pierce's* holding. In *Norgaard*, 121 F.3d at 1078, the Seventh Circuit discussed *Pierce* in relation to *Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995):

> One court of appeals has held that a change of law by a state court in litigation involving the same events as the federal case may permit reopening. *Pierce v. Cook & Co.*, 518 F.2d 720 (10th Cir. 1975) (en banc). No matter how persuasive a litigant's arguments, a federal court cannot alter or affect state law the way a state

> court may. A litigant whose adversary's choice of forum disables it from making a request for modification of state law--that is, a plaintiff whose case is removed to federal court, or a defendant haled into federal court initially--has a much better claim to use Rule 60(b)(6), if state law later changes in its favor, than do litigants such as the Norgaards. But even this claim is not strong enough, given *Plaut*. If Congress cannot tell a federal court to reopen a judgment in order to give the losing side the benefit of a change of law, neither may a state. Legitimate interests in finality also counsel against revision. Thus it can be no surprise that other circuits have not followed *Pierce*.

Norgaard, 121 F.3d at 1078. In light of *Norgaard*, and the fact that *Collins* is far more analogous to this case than is *Pierce*, this court declines to rely upon *Pierce*. This court also declines to rely upon *First American National Bank of Nashville* (cited by the court in *Blue Diamond Coal)*, for the reason that the sole case relied upon by the district court in reaching its holding is *Pierce*. *See* 111 F.R.D. at 75.

The final relevant case cited by the court *in Blue Diamond Coal* is *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743 (5th Cir. 1995). In *Batts*, the Fifth Circuit reversed a district court's granting of Rule 60(b)(6) relief, holding that the district court abused its discretion in opening a final judgment based upon a subsequent change in the law. However, in a footnote, the court noted that there are some situations in which a subsequent change in the law "may" constitute an extraordinary circumstance warranting Rule 60(b)(6) relief. One of the situations is "where the subsequent court decision is closely related to the case in question, such

as where the Supreme Court resolves a conflict between another circuit ruling and that case." *Id.* at 748 n.6 (citing *Ritter v. Smith*, 811 F.2d 1398, 1402-03 (11th Cir.), *cert. denied*, 483 U.S. 1010 (1987)).

The Supreme Court in *Eastern Enterprises* was not resolving a conflict between circuits--all of the courts of appeals that had considered the issue had upheld the Coal Act against constitutional challenges. *See Eastern Enterprises*, 524 U.S. at ----, 118 S. Ct. at 2144 n.4. More importantly, the facts of *Ritter* are very different--and far more exceptional--than the facts of this case.

In *Ritter*, the Eleventh Circuit held that the Alabama death penalty statute was unconstitutional and ordered the district court to grant a writ of habeas corpus if Alabama did not give the defendant a new sentencing hearing. On December 3, 1984, the district court gave Alabama until June 1, 1985 to resentence the defendant. However, on December 10, 1984, the U.S. Supreme Court granted certiorari in a case challenging the constitutionality of the same statute--*Baldwin v. Alabama*, 469 U.S. 1085 (1984). Before June 1, 1985, the *Ritter* district court granted the state's motion for extension of time to resentence the defendant because of the pending Supreme Court case. On June 17, 1985, the Supreme Court upheld the constitutionality of the Alabama statute. *See Baldwin v. Alabama*, 472 U.S. 372 (1985). Shortly thereafter, the state moved for Rule 60(b)(6) relief in *Ritter's* case, seeking to set aside the district court's order which conditionally granted the writ of habeas corpus. The district court granted the motion and the Eleventh Circuit affirmed. *See Ritter, 811* F.2d at 13991400.

In affirming the district court's grant of Rule 60(b)(6) relief, the Eleventh Circuit stated:

> Our investigation thus leads us to conclude that something more than a `mere' change in the law is necessary to provide the grounds for Rule 60(b)(6) relief. Several factors in this case, in addition to the fact of the change in the law, persuade us that the circumstances are sufficiently extraordinary to warrant relief under Rule 60(b)(6).
>
> A significant factor in this case is the fact that the previous, erroneous judgment of this court had not been executed. When a judgment has been executed a concomitantly greater interest in finality exists. This reasoning explains, in part, the result *in Collins* [*v. City of Wichita*, 254 F.2d *837* (10th Cir. 1958)]. The judgment in Collins was fully executed.
>
> * * *
>
> Similar reasoning can be seen when courts must deal with the effect a change in law has on a consent decree or permanent injunction. Such judgments typically have both past effects and future implications. Generally courts have refused to undo the past, executed effects of the judgments, but they have, almost uniformly, recognized that it would be unjust to give prospective effect to a judgment now known to be improper. ... However, once the judgment has been executed and its effects are no longer prospective, modification of the judgment ordinarily will be unavailable. Thus, the fact that the previous judgment of this court, though final, was

> unexecuted is a significant factor in the extraordinary circumstances favoring relief from the judgment in this case.

Id. at 1401-02 (citations omitted). Other factors that led the court to affirm the grant of Rule 60(b)(6) relief (other than the fact that the prior judgment had not been executed) included the "minimal delay between the finality of the judgment and the motion for Rule 60(b)(6) relief," and "considerations of comity" that are present when "[a] federal court's grant of a writ of habeas corpus upsets the finality of a state court judgment." *Id.* at 1402-03. A final factor cited by the court was the "close relationship" between *Ritter* and *Baldwin*--the U.S. Supreme Court granted certiorari in *Baldwin* for the express purpose of resolving the "significant conflict" between the Eleventh Circuit in *Ritter* and the Alabama Supreme Court in *Baldwin. See Baldwin,* 472 U.S. at 374. *Ritter* described this final factor as being analogous to the "common disaster" situation in *Pierce,* and again distinguished *Collins* on this ground. *See Ritter*, 811 F.2d at 1402-03.

In the present case, unlike in *Ritter,* there is no unexecuted judgment. This Rule 60(b)(6) motion does not concern any prospective effects of this court's judgment; the only issue that has been raised is the past monies paid by Plaintiffs to the Combined Fund. In addition, there was a greater delay between the judgment and the Rule 60(b)(6) motion in this case than in *Ritter* (four years versus nine months), and there are no considerations of comity present in this case. Finally, as discussed above, this case is more analogous to *Collins* than to *Pierce,* and further, the persuasive value of *Pierce* is diminished in this Circuit in light of *Norgaard.*

Therefore, after considering the legal underpinnings of the court's opinion in *Blue Diamond Coal,* this court is not persuaded that Rule 60(b)(6) relief is warranted in this case. And to the extent the differences between the plaintiff in that case and the Plaintiffs in this case are relevant, the differences militate against Rule 60(b)(6) relief in this case. The first factor listed by the court in *Blue Diamond Coal* that favored the granting of Rule 60(b)(6) relief was: "the amount of money involved (over Fourteen Million from a reorganized Chapter 11 debtor)." *Blue Diamond Coal Co. v. Shalala, No.* 3:93-CV-473, slip op. at 9 (E.D. Tenn. November 4, 1998). As discussed above, this court is aware of no authority indicating that the amount of money involved is a relevant factor in Rule 60(b)(6) motions--let alone that it should be entitled to great weight. But to the extent the amount of money is important, Blue Diamond Coal Co. paid far more money to the Combined Fund than any of the Plaintiffs here. Further, there has been no contention that any Plaintiff in this case is a Chapter 11 debtor or is otherwise the subject of bankruptcy proceedings.

In conclusion, while it is certainly understandable for Plaintiffs to feel as if they have been treated unfairly, Plaintiffs have nevertheless failed to demonstrate that sufficiently exceptional circumstances exist to overcome the strong policy favoring the finality of judgments. Therefore, Plaintiffs' Motion for Relief from Judgment is **DENIED**.

ALL OF WHICH IS ORDERED this 17th day of November 1999.

John Daniel Tinder, Judge
United States District Court

Supreme Court, U.S.
FILED
NOV
OFFICE

(3)

No. 01-184

In the Supreme Court of the United States

BLUE DIAMOND COAL COMPANY, PETITIONER

v.

LARRY MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

THEODORE B. OLSON
Solicitor General
Counsel of Record
ROBERT D. MCCALLUM, JR.
Assistant Attorney General
DOUGLAS N. LETTER
JEFFREY CLAIR
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

23 pp

QUESTION PRESENTED

The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, obligated certain coal mine operators to finance the health-care benefits of retired miners who had formerly been their employees, through contributions to the United Mine Workers of America Combined Benefit Fund (Combined Fund). Petitioner made payments to the Combined Fund, and also brought a constitutional challenge to that statutory obligation, which was rejected by the lower federal courts. After final judgment was entered in petitioner's case, this Court held the statute unconstitutional as applied to a similarly situated litigant in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998). In light of the *Eastern* decision, the Commissioner of Social Security voided petitioner's obligation to make payments to the Combined Fund prospectively. Petitioner then sought retroactive relief (including reimbursement of monies it had previously paid to the Combined Fund) by moving to reopen the final judgment rejecting its constitutional challenge under Federal Rule of Civil Procedure 60(b)(6).

The question presented is whether Rule 60(b)(6) authorized the district court to reopen its final judgment in light of the intervening decision in *Eastern Enterprises* in order to grant petitioner retroactive relief.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statement	2
Argument	9
Conclusion	18

TABLE OF AUTHORITIES

Cases:

Ackermann v. *United States*, 340 U.S. 193 (1950)	10
Adams v. *Merrill Lynch Pierce Fenner & Smith*, 888 F.2d 696 (10th Cir. 1989)	15, 16
Agostini v. *Felton*, 521 U.S. 203 (1997)	11
Bailey v. *Ryan Stevedoring Co.*, 894 F.2d 157 (5th Cir.), cert. denied, 498 U.S. 829 (1990)	11
Batts v. *Tow-Motor Forklift Co.*, 66 F.3d 743 (5th Cir. 1995), cert. denied, 517 U.S. 1221 (1996)	12
Berryhill v. *United States*, 199 F.2d 217 (6th Cir. 1952)	12
Biggins v. *Hazen Paper Co.*, 111 F.3d 205 (1st Cir.), cert. denied, 522 U.S. 952 (1997)	12
Blue Diamond Coal Co., In re, 79 F.3d 516 (6th Cir. 1996), cert. denied, 519 U.S. 1055 (1997)	5
Chicot County Drainage Dist. v. *Baxter State Bank*, 308 U.S. 371 (1940)	12, 14
Cincinnati Ins. Co. v. *Flanders Elec. Motor Serv., Inc.*, 131 F.3d 625 (7th Cir. 1997)	12
Collins v. *City of Wichita*, 254 F.2d 837 (10th Cir. 1958)	11, 13
Coltec Indus., Inc. v. *Hobgood*, 184 F.R.D. 60 (W.D. Pa. 1999), appeals pending, Nos. 00-2458 and 00-4385 (3d Cir. argued Sept. 19, 2001)	13

Cases—Continued: Page

DeWeerth v. *Baldinger*, 38 F.3d 1266 (2d Cir.), cert. denied, 513 U.S. 1001 (1994) 12
Dowell v. *State Farm Fire & Cas. Auto. Ins. Co.*, 993 F.2d 46 (4th Cir. 1993) 12
Eastern Enters. v. *Apfel*, 524 U.S. 498 (1998) 2, 5
Federated Dep't Stores, Inc. v. *Moitie*, 452 U.S. 394 (1981) 10, 12
First Am. Nat'l Bank v. *Bonded Elevator, Inc.*, 111 F.R.D. 74 (W.D. Ky. 1986) 14
Gondeck v. *Pan Am. World Airways, Inc.*, 382 U.S. 25 (1965) 14
Holland v. *Virginia Lee Co.*, 188 F.R.D. 241 (W.D. Va. 1999) 13
James B. Beam Distilling Co. v. *Georgia*, 501 U.S. 529 (1991) 14, 15
Liljeberg v. *Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988) 10
Lindsey Coal Mining Co. Liquidating Trust v. *Apfel*, No. 94-143 (W.D. Pa. Aug. 4, 1999) 13
Marshall v. *Board of Educ.*, 575 F.2d 417 (3d Cir. 1978) 11, 13
Miller v. *French*, 530 U.S. 327 (2000) 11
National League of Cities v. *Usery*, 426 U.S. 833 (1976) 11
Norman v. *Nichiro Gyogyo Kaisha, Ltd.*, 761 P.2d 713 (Alaska 1988) 14
Pierce v. *Cook & Co.*, 518 F.2d 720 (10th Cir. 1975), cert. denied, 423 U.S. 1079 (1976) 14, 15, 16
Shearson/American Express, Inc. v. *McMahon*, 482 U.S. 220 (1987) 16
Templeton Coal Co. v. *Apfel*, No. TH-93-158-C-T/H (S.D. Ind. Nov. 17, 1999) 13
Travelers Indem. Co. v. *Sarkisian*, 794 F.2d 754 (2d Cir.), cert. denied, 479 U.S. 885 (1986) 11

Constitution, statutes and rule: Page

U.S. Const. Amend. I (Establishment Clause) 12-13
Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.* 2
26 U.S.C. 9701(c)(1) 3
26 U.S.C. 9702 3
26 U.S.C. 9703(b)(1) 17
26 U.S.C. 9703(f) 3
26 U.S.C. 9704 3
26 U.S.C. 9704(d) 4
26 U.S.C. 9705(b) 4
26 U.S.C. 9706(a) 3
26 U.S.C. 9706(a)(1) 3
26 U.S.C. 9706(a)(2) 4
26 U.S.C. 9706(a)(3) 4
28 U.S.C. 1292(b) 7
Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, § 108(h)(9)(A), 108 Stat. 1487 3
Department of the Interior and Related Agencies Appropriation Act, 2001, Pub. L. No. 106-291, § 701(a)(2), 114 Stat. 1024 18
Fed. R. Civ. P.:
Rule 60(b) 6, 10, 12, 18
Rule 60(b)(6) 6, 7, 9, 10, 11, 16, 17

In the Supreme Court of the United States

No. 01-184

BLUE DIAMOND COAL COMPANY, PETITIONER

v.

LARRY MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 249 F.3d 519. The opinion of the district court vacating its prior judgment (Pet. App. 19a-29a) is unreported. The prior decision of the district court rejecting petitioner's constitutional claim on the merits (Pet. App. 30a-48a) is reported at 174 B.R. 722. The prior decision of the court of appeals rejecting that claim is reported at 79 F.3d 516. This Court's order denying certiorari is reported at 519 U.S. 1055.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 2001. The petition for a writ of certiorari was filed on July 30, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), 26 U.S.C. 9701 *et seq.*, in response to a crisis that threatened to deprive more than 100,000 retired coal miners and their dependents of promised lifetime health-care benefits. From 1950 until the enactment of the Coal Act, the health-care benefits of many retired coal miners were financed through multi-employer trusts established by collective bargaining agreements, known as National Bituminous Coal Wage Agreements (NBCWAs), between the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA). The NBCWAs adopted in 1974 and afterwards provided that retired miners would receive health-care benefits for their entire lifetimes. See generally *Eastern Enters.* v. *Apfel*, 524 U.S. 498, 505-511 (1998) (plurality opinion).

In the 1980s and 1990s, the financial stability of the trusts established under the NBCWA system was seriously threatened. After extensive consideration of recommendations for ensuring that retired miners would receive lifetime health-care benefits, Congress enacted the Coal Act, which established the United Mine Workers of America Combined Benefit Fund (Combined Fund or Fund) as a private multi-employer health benefit plan. The Combined Fund provides health-care benefits to beneficiaries who, at the time of passage of the Act, were eligible to receive, and were

receiving, benefits from the preexisting trusts. See 26 U.S.C. 9702, 9703(f).

Under the Coal Act, financial responsibility for the health-care benefits of a retired miner and his dependents is assigned to a coal mine operator (known as a "signatory operator") that signed a NBCWA or similar agreement, employed the retired miner, and remains in business. See 26 U.S.C. 9701(c)(1), 9704, 9706(a). Although the Commissioner of Social Security (Commissioner) assigns eligible beneficiaries to signatory operators, the assigned operators thereafter pay their premiums directly to the Combined Fund.[1] The Commissioner makes assignments based on a review of employment records. 26 U.S.C. 9706(a). Assignments are made according to a three-tiered hierarchy:

First, the Commissioner must seek to assign a beneficiary to the "signatory operator" that remains "in business," signed a collective bargaining agreement with the UMWA in 1978 or later, and was the most recent signatory operator to employ the miner in the coal industry for at least two years. 26 U.S.C. 9706(a)(1).

Second, if an assignment of a particular beneficiary cannot be made under the first tier, the Commissioner must attempt to assign the beneficiary to the signatory operator that remains in business, signed a collective

---

[1] Many references in the legislative record are to the Department of Health and Human Services, which at the time included the Social Security Administration. In 1995, the Social Security Administration became an independent agency within the Executive Branch, and the Commissioner of Social Security assumed the duties of the Secretary of Health and Human Services under the Coal Act. See Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, § 108(h)(9)(A), 108 Stat. 1487.

bargaining agreement with the UMWA in 1978 or later, and was the most recent signatory operator to employ the miner in the coal industry for any period of time. 26 U.S.C. 9706(a)(2).

Third, if an assignment cannot be made under the first or second tier, the Commissioner must seek to assign the beneficiary to the signatory operator that remains in business and employed the miner in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 collective bargaining agreement. 26 U.S.C. 9706(a)(3).

Finally, if an assignment cannot be made under any of the three tiers, then the beneficiary is considered "unassigned." In that event, the beneficiary's health-care benefits are financed with funds transferred from interest earned on the Department of the Interior's Abandoned Mine Land Reclamation Fund (AML Fund), 26 U.S.C. 9705(b), or, if that source of funds is exhausted or unavailable, from an additional premium assessed against all assigned signatory operators on a *pro rata* basis, 26 U.S.C. 9704(d).

2. Petitioner is a coal mining company located in Knoxville, Tennessee. Pet. App. 4a. Petitioner has been in the business of mining and selling bituminous coal since 1946. It initially employed UMWA labor and signed the NBCWAs that required employer contributions to multi-employer trusts financing miners' retirement and health-care benefits. In 1964, petitioner ceased employing union miners and terminated payments into the trusts. Since that time, it has continued to mine coal with non-union labor and has declined to participate in UMWA collective bargaining agreements. *Ibid.*; see also *In re Blue Diamond Coal Co.*,

79 F.3d 516, 520 (6th Cir. 1996), cert. denied, 519 U.S. 1055 (1987).

The Commissioner determined that financial responsibility for the health-care benefits of approximately 1,400 beneficiaries of the Combined Fund should be assigned to petitioner under the third tier of the Coal Act's assignment scheme. Pet. App. 4a. Petitioner challenged the constitutionality of those assignments in district court, contending that the Coal Act's imposition of premium obligations on it violated substantive due process and constituted an unconstitutional taking of its property without just compensation. Petitioner contended that the Coal Act's retroactive imposition of liability on it for lifetime health-care benefits was unconstitutional because, at the time it employed miners under the NBCWA system (before 1974), no agreement expressly promised those miners lifetime health-care benefits. Petitioner sought declaratory and equitable relief against the statute's application to it. The district court rejected that challenge in a final judgment entered on November 9, 1994. Pet. App. 32a-47a. The court of appeals affirmed, and this Court denied petitioner's petition for a writ of certiorari (which presented only the taking issue). *In re Blue Diamond Coal Co.*, 79 F.3d 516 (6th Cir. 1996), cert. denied, 519 U.S. 1055 (1997); see Pet. 9 n.6.

3. Subsequently, in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998), this Court ruled that the Coal Act's provision for assignment of financial responsibility for retired coal miners' benefits under the third tier was unconstitutional in the case of a signatory operator that, like petitioner, did not sign a NBCWA in 1974 or later. The Court was divided as to its reasoning. Four Justices concluded that the assignment was an unconstitutional taking without compensation. See *id.* at 504

(plurality opinion). Justice Kennedy concluded that the Coal Act's provision for assignment of financial liability was not an unconstitutional taking—a conclusion with which the four Justices in the dissent agreed (see *id.* at 554 (Breyer, J., dissenting)—but that the provision violated substantive due process as applied to the coal mine operator before the Court. See *id.* at 539 (opinion of Kennedy, J., concurring in the judgment and dissenting in part).

In response to the *Eastern Enterprises* decision, the Commissioner determined that the assignments of miners previously made to petitioner were "void," and informed petitioner that it was relieved of any further obligation to pay premiums to the Combined Fund based on those assignments. See C.A. App. 63. The Commissioner did not, however, address premium payments petitioner had already made to the Combined Fund in accordance with the final judgment that had sustained the validity of the Coal Act assignments.

4. In an effort to recover payments that it made to the Combined Fund before the *Eastern Enterprises* decision, petitioner moved in the district court for relief from the final judgment under Federal Rule of Civil Procedure 60(b)(6).[2] The district court granted the motion, vacated its final judgment, and restored the case to its active docket for further proceedings. Pet. App. 21a-29a.

Although the district court acknowledged "the chaos that would ensue if otherwise final judgments were reopened every time there was a change in the judicial

---

[2] Rule 60(b) provides, in pertinent part: "On motion and upon such terms as are just, the court may relieve a party * * * from a final judgment * * * for * * * (6) any other reason justifying relief from the operation of the judgment."

view of applicable law," it found that concern inapplicable here because (it stated) "there was no controlling judicial interpretation of the challenged provision" at the time it had entered its final judgment. Pet. App. 26a. The court noted that some courts have granted relief from a final judgment when the failure to do so would result in divergent judgments arising out of the same accident or contractual transaction. *Id.* at 27a. It reasoned that the imposition of Coal Act liability under the third tier of the statutory assignment scheme on companies that had not signed an NBCWA in 1974 or later could be regarded as a single transaction requiring similar uniformity in court judgments. *Id.* at 27a-28a. The court also stated that it would be unfair to allow the final judgment to stand in light of the facts that petitioner had made $14 million in payments to the Combined Fund before the *Eastern Enterprises* decision, similarly situated companies had declined to pay the Combined Fund and had thus avoided liability, and the Coal Act in certain other circumstances directs the Combined Fund to repay premiums paid under certain assignments that are later determined to be erroneous. *Id.* at 28a.

5. On appeal pursuant to 28 U.S.C. 1292(b), the court of appeals reversed. The court concluded that this Court's decision in *Eastern Enterprises* did not provide a reason for retrospectively vacating the final judgment establishing petitioner's liability to the Combined Fund for the period before that decision. Pet. App. 1a-18a.

The court observed, first, that a change in decisional law ordinarily is not regarded as a sufficient circumstance to warrant relief from a final judgment under Rule 60(b)(6), even when the statute on which the final judgment rested is subsequently held to be unconstitutional. Pet. App. 8a. The court then rejected

the submission that petitioner's situation is similar to other cases in which courts have granted relief from final judgments in order to harmonize divergent judgments arising out of the "same transaction." *Id.* at 9a-11a. The court noted that several of those cases turned on a special concern about diversity jurisdiction, namely, that the federal courts' application of state law should be consistent with state court rulings in litigation arising out of the same transaction. *Id.* at 11a. It also stressed that, in any event, those cases "involve transactions with a much tighter nexus of common activity, common rights, and common liability than a law passed by Congress to regulate the payment of medical health benefits to the retirees of an entire industry." *Ibid.* Although the court observed that third-tier Coal Act assignments to companies that employed UMWA miners only before 1974 do "define a fixed and identifiable universe of affected parties," nonetheless "the nature and extent of the liability" imposed on such companies "varies with each particular company's involvement with the several health benefit funds which preceded the Combined Fund," *ibid.*, which in turn was "established over the course of several decades in a series of discrete and separate collective bargaining negotiations." *Id.* at 12a. Thus, the court concluded, third-tier liability under the Coal Act "is not a common transaction similar to a car accident or a shareholders agreement" that would warrant relief from final judgment in order to harmonize divergent judgments. *Id.* at 13a.

The court also concluded that the amount of money that petitioner had paid under the prior judgment was not by itself a sufficient basis for granting relief from judgment. Pet. App. 15a-16a. The court noted that it had previously held that a duty to pay money under a

judgment is not an excessive burden or hardship of the sort that warrants relief under Rule 60(b)(6), and that it would be difficult to establish rules for determining the amount of monetary liability that might justify relief. *Ibid.*

Finally, the court stated that the Combined Fund had substantial reliance interests in the final judgment that militated against granting relief. Pet. App. 16a-17a. The court noted that four years had elapsed between the district court's prior judgment and its subsequent grant of post-judgment relief, and that the Combined Fund had in the interim used the premiums that petitioner had paid under the prior judgment to cover the health benefits of numerous retirees. *Id.* at 17a. "Given the public policy in favor of the finality of judgment[s], and the length of time between final judgment and Rule 60(b)(6) relief," the court concluded, "equity clearly favors adhering to the district court's final judgment." *Ibid.*

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. The decision properly applies the well-settled rule that a change in decisional law ordinarily does not, without more, warrant relief from a final judgment under Rule 60(b)(6). In addition, significant reliance interests in this case flowing from the final judgment weigh against reopening of the judgment. Further review is therefore not warranted.

1. a. Rule 60(b)(6) grants federal courts authority to relieve a party from a final judgment "upon such terms as are just, provided that the motion is made within a reasonable time." *Liljeberg* v. *Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988). Rule 60(b)(6) rec-

ognizes the courts' authority to grant relief from judgment for reasons not specified in other clauses of Rule 60(b) (such as fraud or mistake). Rule 60(b)(6) does not, however, afford a district court unbridled authority to disturb the finality of prior judgments or to unsettle the expectations of those who have relied on them. See, *e.g.*, *Ackermann* v. *United States*, 340 U.S. 193, 198-200 (1950). To the contrary, the courts' discretion to set aside a prior judgment under Rule 60(b)(6) is circumscribed by the strong public policy favoring finality of judgments and termination of litigation. Cf. *Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 401 (1981) ("Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties."). Accordingly, this Court has made clear that, when a litigant does not have a basis for seeking relief from a judgment because of fraud, mistake, or one of the other grounds specifically enumerated in Rule 60(b), a court may authorize relief under Rule 60(b)(6) only in "extraordinary circumstances." *Liljeberg*, 486 U.S. at 863-864; see *Ackermann*, 340 U.S. at 200.

The court of appeals correctly concluded in this case that this Court's decision in *Eastern Enterprises* was not an "extraordinary circumstance[]" warranting vacatur of the final judgment that had definitively determined that petitioner was liable in past years to make contributions to the Combined Fund. Although this Court's decision in *Eastern Enterprises* established that the lower courts' previous resolution of petitioner's constitutional claims had been incorrect, that point by itself does not justify reopening this litigation. Lower courts often reach divergent results about legal issues

before they are definitively settled by this Court, and yet the Court has never suggested that long-terminated litigation should be revived merely because some lower courts had resolved those cases based on what was later revealed to be an erroneous view of the law. To the contrary, the Court has made clear that "[i]ntervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." *Agostini* v. *Felton*, 521 U.S. 203, 239 (1997). That is especially so with respect to a final judgment that disposes of monetary claims based on past conduct or liability. See *Miller* v. *French*, 530 U.S. 327, 343-345 (2000).

Consistent with that principle, the great weight of authority in the courts of appeals holds that a change in decisional law (including decisions of this Court) casting doubt on the law on which a final judgment was predicated is not by itself an "extraordinary circumstance[]" warranting relief from judgment under Rule 60(b)(6). See *Bailey* v. *Ryan Stevedoring Co.*, 894 F.2d 157 (5th Cir.) (this Court's decision construing attorney's-fee statutes did not warrant reopening final judgment denying fees to plaintiff in employment-discrimination case based on arguably incorrect view of the law), cert. denied, 498 U.S. 829 (1990); *Travelers Indem. Co.* v. *Sarkisian*, 794 F.2d 754, 756-757 (2d Cir.) (this Court's decision construing RICO statute did not warrant reopening final judgment predicated on contrary view), cert. denied, 479 U.S. 885 (1986); *Marshall* v. *Board of Educ.*, 575 F.2d 417, 425 (3d Cir. 1978) (this Court's decision in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), did not justify reopening final judgment holding school board liable for overtime in past years); *Collins* v. *City of Wichita*, 254 F.2d 837, 839 (10th Cir. 1958) (this Court's decision invalidating Kansas statute

relating to condemnation proceedings did not warrant reopening final judgment upholding statute against challenge brought by different party); *Berryhill* v. *United States*, 199 F.2d 217, 218-219 (6th Cir. 1952) (this Court's decision construing National Service Life Insurance Act did not warrant reopening final judgment arguably predicated on contrary view); see also *Cincinnati Ins. Co.* v. *Flanders Elec. Motor Serv., Inc.*, 131 F.3d 625, 628-630 (7th Cir. 1997) (subsequent change in state courts' decisional law does not warrant reopening of final judgment by federal court sitting in diversity); *Batts* v. *Tow-Motor Forklift Co.*, 66 F.3d 743, 748-749 (5th Cir. 1995) (same), cert. denied, 517 U.S. 1221 (1996); *DeWeerth* v. *Baldinger*, 38 F.3d 1266, 1272-1273 (2d Cir.) (same), cert. denied, 513 U.S. 1001 (1994); *Dowell* v. *State Farm Fire & Cas. Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993) (same); *Biggins* v. *Hazen Paper Co.*, 111 F.3d 205, 211 (1st Cir.) (change in state law did not warrant reopening state-law contract claim), cert. denied, 522 U.S. 952 (1997).

b. Petitioner argues (Pet. 10, 13-14) that a different result is warranted when this Court issues a constitutional ruling that casts doubt on a lower court decision that had rested on a contrary view of the Constitution. Neither this Court nor the lower courts, however, have recognized any "constitutional law" exception to the principles of finality underlying Rule 60(b). Cf. *Moitie*, 452 U.S. at 400-401 (rejecting "public policy" exception to res judicata); *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U.S. 371, 374 (1940) (rejecting contention that final judgment based on unconstitutional law could not be res judicata). Indeed, this Court's observation in *Agostini* that a change in decisional law ordinarily will not warrant relief from final judgment was made in a constitutional case involving the Estab-

lishment Clause. The Third Circuit's decision in *Marshall* v. *Board of Education*, *supra*, and the Tenth Circuit's decision in *Collins* v. *City of Wichita*, *supra*, expressly declined to reopen final judgments based on subsequent constitutional decisions of this Court. And all the other lower courts that have addressed the precise issue presented by this case have agreed that this Court's decision in *Eastern Enterprises* did not warrant reopening final judgments to relieve coal operators retroactively from their obligations to the Combined Fund in past years.[3]

Petitioner maintains (Pet. 13), however, that, once this Court declares a statute unconstitutional, the statute is stripped of all legal effect, both before and after the Court's decision. But in *Chicot County Drainage District*, this Court rejected that basis for the very similar contention that a judgment based on an unconstitutional law could not be res judicata:

> [S]uch broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.

---

[3] See *Holland* v. *Virginia Lee Co.*, 188 F.R.D. 241 (W.D. Va. 1999); *Coltec Indus., Inc.* v. *Hobgood*, 184 F.R.D. 60 (W.D. Pa. 1999), appeals pending, Nos. 00-2458 & 00-4385 (3d Cir. argued Sept. 19, 2001); *Lindsey Coal Mining Co. Liquidating Trust* v. *Apfel*, No. 94-143 (W.D. Pa. Aug. 4, 1999) (Resp. UMWA Combined Fund Br. in Opp. App. 1a-3a); *Templeton Coal Co.* v. *Apfel*, No. TH-93-158-C-T/H (S.D. Ind. Nov. 17, 1999) (Resp. UMWA Combined Fund Br. in Opp. App. 4a-32a).

308 U.S. at 374. Indeed, petitioner acknowledges in passing (Pet. 13) that its assertion that the unconstitutional application of the Coal Act can have no legal effect is subject to the important exception for those "effects that may be protected by procedural barriers such as statutes of limitation or final judgments." This case, of course, involves precisely the effect of a final judgment, and so any broad assertion that a declaration of a statute's unconstitutionality must be applied fully retroactively does not apply here. See *James B. Beam Distilling Co.* v. *Georgia*, 501 U.S. 529, 541 (1991) (opinion of Souter, J.) ("Of course, retroactivity in civil cases must be limited by the need for finality * * * ; once suit is barred by res judicata or by statutes of limitation or repose, a new rule cannot reopen the door already closed.") (citation omitted).

c. Petitioner also contends (Pet. 7-8) that this case is governed by a narrow line of cases in which the courts have reopened a final judgment denying relief to a party when a subsequent decision of another court allowed relief to another party in a separate case arising out of the same transaction. See *Gondeck* v. *Pan American World Airways, Inc.*, 382 U.S. 25 (1965) (per curiam) (claims arising out of same automobile accident); *Pierce* v. *Cook & Co.*, 518 F.2d 720 (10th Cir. 1975) (en banc) (similar), cert. denied, 423 U.S. 1079 (1976); *First Am. Nat'l Bank* v. *Bonded Elevator, Inc.*, 111 F.R.D. 74 (W.D. Ky. 1986) (claims arising out of same promissory note); *Norman* v. *Nichiro Gyogyo Kaisha, Ltd.*, 761 P.2d 713 (Alaska 1988) (same corporate action allegedly breaching same shareholder agreement). As the court of appeals explained (Pet. App. 11a), those cases are inapposite here because they involve "transactions with a much tighter nexus of common activity, common rights, and common liability

than a law passed by Congress to regulate the payment of medical health benefits to the retirees of an entire industry." Those decisions indicate that matters of happenstance (such as the timing or forum of litigation) in different cases arising out of the same incident ordinarily should not lead to the application of a different substantive legal rule. See *Pierce*, 518 F.2d at 723 (noting that the plaintiffs in that case "were forced into federal court by [the defendant's] removal of their state court actions on diversity grounds"). But the same principle has no application to broad-based constitutional challenges to an Act of Congress, such as the Coal Act, that applies to and establishes the liability of a large number of entities. In that circumstance, it is to be expected that the application and validity of the law will be tested by different cases across the country, and the possibility that courts may reach divergent results is simply an inevitable consequence of that fact.[4]

Adams v. *Merrill Lynch Pierce Fenner and Smith*, 888 F.2d 696 (10th Cir. 1989), though not involving divergent judgments arising out of the same transaction or contractual relationship, is not to the contrary. In

---

[4] Petitioner argues (Pet. 6-7) that it should not be penalized for being one of the first entities to bring a constitutional challenge to a law that was eventually held unconstitutional. But as Justice Souter observed in *James B. Beam*, "independent interests" in finality counsel against applying a constitutional decision to "those who had toiled and failed, but whose claims are now precluded by res judicata." 501 U.S. at 542 (opinion of Souter, J.). Although such litigants may claim that they are not being treated equally with those who had not brought unsuccessful litigation earlier but who nonetheless stand to benefit from the Court's constitutional ruling, "[f]inality must * * * delimit equality in a temporal sense, and we must accept as a fact that the argument for uniformity loses force over time." *Ibid.*

that case, the district court initially held that a contract clause requiring arbitration of disputes concerning securities transactions could not validly compel arbitration of federal securities-law claims. Subsequently, in *Shearson/American Express, Inc.* v. *McMahon*, 482 U.S. 220 (1987), this Court ruled that a similar contract clause compelling arbitration of the same kinds of federal securities-law claims was valid and enforceable. The district court then granted relief from judgment in light of *Shearson* and directed arbitration, and the court of appeals affirmed. *Adams*, 888 F.2d at 702. *Adams* was unusual, however, in that (unlike this case) the initial order in that case merely denied a request to compel arbitration and thus did not entail a final judgment on the merits of the dispute between the parties. *Adams* thus did not implicate the interests of finality and repose that generally flow from entry of a final judgment that terminates a dispute between litigants.[5]

---

[5] The court of appeals stated in *Adams* that, "[i]n this circuit, a change in relevant case law by the United States Supreme Court warrants relief under Fed.R.Civ.P. 60(b)(6)." 888 F.2d at 702. For that proposition, however, the *Adams* court cited the Tenth Circuit's earlier decision in *Pierce*, which (as explained above) involved the narrow "same accident" exception. Moreover, *Adams* did not suggest that the Tenth Circuit had overruled its earlier decision in *Collins*, which had declined to reopen a final judgment notwithstanding a subsequent, contrary constitutional decision of this Court. Indeed, the Tenth Circuit in *Pierce* distinguished *Collins* on the ground that, in *Collins*, "the decisional change came in an unrelated case" (518 F.2d at 723), precisely the circumstance here. *Collins* thus remains good law in the Tenth Circuit and would govern this case in that circuit. Against the background of *Pierce* and *Collins*, the court's statement in *Adams* that a change in law by this Court warrants reopening a final judgment should not be taken to mean more than such a decision *may* warrant relief

2. The court of appeals also correctly concluded (Pet. App. 16a-18a) that significant reliance interests weigh heavily against the reopening of the final judgment in this case under Rule 60(b)(6). Petitioner paid more than $14 million in premium payments to the Combined Fund pursuant to the prior judgment in this case. Pet. App. 6a. The Coal Act requires the Combined Fund to use "all available plan resources" to ensure that health-care benefits, to the maximum extent feasible, are substantially the same as benefits provided under the pre-Coal Act benefit plans. See 26 U.S.C. 9703(b)(1). Consequently, as the court of appeals stated (Pet. App. 7a), the Combined Fund has already used all the payments required by the prior judgment in this case to provide benefits to coal mine retirees and their dependents.

Permitting petitioner to reopen the final judgment in order to seek recovery of those revenues from the Combined Fund would create further uncertainty in the fiscal administration of the health benefits mandated by the Coal Act and would interfere with the settled expectations of the Combined Fund, its beneficiaries, the government, and other parties affected by the statute. The Combined Fund would have to look to some other source to make up the shortfall—either to further transfers from interest earned on the government's AML Fund, if such interest remains available, or to *pro rata* contributions required from the other signatory operators whose former employees are beneficiaries of the Combined Fund. See p. 4, *supra*. The government and other signatory operators, however, were entitled to make plans for their resources based

---

from judgment *if* there are other, extraordinary circumstances present.

on the assumption that the final judgment in this case had definitively determined that the Combined Fund was entitled to disburse the money that petitioner had previously paid to it. That is exactly the kind of reliance interest that is protected by the principles of finality in Rule 60(b).[6]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General
ROBERT D. MCCALLUM, JR.
Assistant Attorney General
DOUGLAS N. LETTER
JEFFREY CLAIR
Attorneys

NOVEMBER 2001

---

[6] Petitioner has not, however, been wholly denied the benefits of this Court's ruling in *Eastern Enterprises*. As petitioner acknowledges (Pet. 3), the Commissioner voided petitioner's assignments after *Eastern Enterprises*, thereby relieving petitioner of prospective premium obligations under the statute. Moreover, Congress enacted legislation that refunded to petitioner (and to other similarly situated parties) a portion of the premiums it paid under Coal Act provisions, that, though sustained by prior final judgments, were later held unconstitutional by *Eastern Enterprises*. See Department of the Interior and Related Agencies Appropriations Acts, 2001, Pub. L. No. 106-291, § 701(a)(2), 114 Stat. 1024. Petitioner has received approximately $1.4 million pursuant to that legislation. See Pet. 4 n.2.